



**DELHI UNIVERSITY  
LIBRARY**

# ELHI UNIVERSITY LIBRARY

V73:8:N3

H4.2

66124

Date of release for loan

3 APR 1965

It should be returned on or before the date last stamped  
An overdue charge of one anna will be levied for each day  
is kept beyond that date.

---



The World's Classics

CDLXXXIX

SPEECHES AND  
DOCUMENTS IN  
AMERICAN  
HISTORY

VOL II: 1818-1865

OXFORD UNIVERSITY PRESS

AMEN HOUSE, E.C. 4

London Edinburgh Glasgow New York

Toronto Melbourne Capetown Bombay

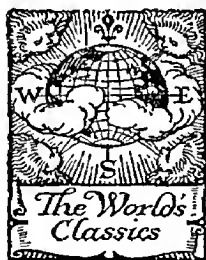
Calcutta Madras

HUMPHREY MILFORD

PUBLISHER TO THE UNIVERSITY

# SPEECHES AND DOCUMENTS IN AMERICAN HISTORY

*Selected and Edited by*  
**ROBERT BIRLEY**



**VOL. II: 1818-1865**

**OXFORD UNIVERSITY PRESS**  
**LONDON: HUMPHREY MILFORD**

*This second Volume of 'Speeches and Documents in American History, 1818 to 1865,' was first published in 'The World's Classics' in 1944*

*The four Volumes of Documents are divided as follows :—*

*Vol. I 1776–1815*

*Vol. II 1818–1865*

*Vol. III 1865–1913*

*Vol. IV 1914–1939*

## CONTENTS

Foreword . . . . .	ix
Acknowledgement . . . . .	x
Glossary . . . . .	xi
1. The Rush-Bagot Agreement, April 1818 . . . . .	1
2. <i>McCulloch v. Maryland</i> , 1819 . . . . .	2
3. <i>Dartmouth College v. Woodward</i> , 1819 . . . . .	19
4. The Missouri Compromise, 1820 . . . . .	31
(a) The Tallmadge Amendment, 13 February 1819 . . . . .	32
(b) The Missouri Enabling Act, 6 March 1820 . . . . .	32
5. <i>Cohens v. Virginia</i> , 1821 . . . . .	34
6. The Monroe Doctrine, 2 December 1823 . . . . .	48
7. <i>Gibbons v. Ogden</i> , 1824 . . . . .	53
8. Jackson's First Inaugural Address, 4 March 1829 . . . . .	62
9. Webster's Reply to Hayne, 1830 . . . . .	66
(a) Second Speech on Foot's Resolution, 26, 27 January 1830 . . . . .	67
(b) Last Remarks on Foot's Resolution, 27 January 1830 . . . . .	78
10. The First Number of <i>The Liberator</i> , 1 January 1831 . . . . .	81
11. Jackson's Struggle with the Bank of the United States, 1832, 1833 . . . . .	84
(a) Veto Message, 10 July 1832 . . . . .	84
(b) Protest to the Senate, 15 April 1833 . . . . .	90
12. The South Carolina Ordinance of Nullification, 24 November 1832 . . . . .	99
13. Jackson's Proclamation to the People of South Carolina, 10 December 1832 . . . . .	103
14. Whittier's <i>Voices of Freedom</i> . . . . .	114
(a) <i>The Hunters of Men</i> . . . . .	114
(b) <i>The Farewell of a Virginia Slave Mother</i> . . . . .	116



15.	Alexis de Tocqueville: <i>Democracy in America</i> , 1835, 1840 . . . . .	118
16.	Charles River Bridge v. Warren Bridge, 1837 . . . . .	135
17.	J. C. Calhoun's Speech on Abolitionist Petitions, January 1839 . . . . .	139
18.	The Resolution for the Annexation of Texas, 1 March 1845 . . . . .	144
19.	Polk's First Annual Message, 2 December 1845 . . . . .	146
20.	J. R. Lowell: <i>The Biglow Papers</i> , 1846-1847 . . . . .	148
	(a) Thrash away, you'll hev to rattle . . . . .	149
	(b) <i>The Debate in the Sennit</i> . . . . .	153
	(c) <i>The Pious Editor's Creed</i> . . . . .	156
21.	The Crisis of 1850 . . . . .	159
	(a) The Wilmot Proviso, 7 August 1846 . . . . .	161
	(b) Clay's Resolutions, 29 January 1850 . . . . .	161
	(c) Calhoun's Speech, 4 March 1850 . . . . .	163
	(d) Webster's Speech, 7 March 1850 . . . . .	172
	(e) Seward's Speech . . . . .	183
	(f) Clay's Final Speech . . . . .	183
	(g) J. G. Whittier: <i>Ichabod</i> . . . . .	193
22.	The Kansas-Nebraska Act, 30 May 1854 . . . . .	194
23.	Lincoln's Speech at Peoria, 16 October 1854 . . . . .	196
24.	The <i>Dred Scott</i> Case, 6 March 1857 . . . . .	206
25.	The Lincoln-Douglas Debates, 1858 . . . . .	216
	(a) Lincoln's Springfield Speech, 17 June 1858 . . . . .	217
	(b) Lincoln's Freeport Speech, 27 August 1858 . . . . .	221
	(c) Douglas's Freeport Speech, 27 August 1858 . . . . .	221
	(d) Lincoln's Alton Speech, 13 October 1858 . . . . .	226
26.	John Brown's Last Speech, 1859 . . . . .	231
27.	The South Carolina Ordinance of Secession, 20 December 1860 . . . . .	234
28.	Alexander Stephens' "Corner-stone" Speech, February 1861 . . . . .	234

# Contents

vii

29.	Lincoln's First Inaugural Address, 4 March 1861 .	240
30.	The Constitution of the Confederate States of America, 11 March 1861 . . . . .	251
31.	Robert E. Lee's Letter to his Sister, 20 April 1861	259
32.	Jefferson Davis's Message to Congress, 29 April 1861	260
33.	The Trent Affair, 1861 . . . . .	266
	(a) Queen Victoria to Earl Russell, 1 December 1861 . . . . .	266
	(b) J. R. Lowell: <i>Jonathan to John</i> . . . . .	267
34.	The Homestead Act, 1862 . . . . .	271
35.	The Pacific Railway Act, 1862 . . . . .	273
36.	Lincoln's Letter to Horace Greeley, 22 August 1862	276
37.	Julia Ward Howe: <i>The Battle Hymn of the Republic</i>	277
38.	James Ryder Randall: <i>My Maryland</i> . . . . .	278
39.	The Preliminary Emancipation Proclamation, 22 September 1862 . . . . .	281
40.	The Gettysburg Oration, 19 November 1863 . . . . .	285
41.	The Proclamation of Amnesty and Reconstruction, 8 December 1863 . . . . .	286
42.	The Presidential Election of 1864 . . . . .	289
	(a) The Wade-Davis Bill, 8 July 1864 . . . . .	290
	(b) The Democratic National Platform 29 August 1864 . . . . .	295
43.	Lincoln's Second Inaugural Address, 4 March 1865	297
44.	The Surrender of the Army of Virginia, April 1865	299
	(a) The Terms of Surrender, 9 April 1865 . . . . .	299
	(b) Lee's Farewell to the Army of Virginia, 10 April 1865 . . . . .	300
45.	Lincoln's Last Public Address, 11 April 1865 . . . . .	301
46.	Henry Timrod: <i>Epitaph on the Confederate Dead at Magnolia Cemetery</i> . . . . .	306
	Appendix . . . . .	309
	Index . . . . .	313

[The Constitution<sup>7</sup> of the United States will be found in Volume I and the Amendments in their chronological sequence. Those clauses of the Constitution and Amendments referred to in this volume will be found in an Appendix on page 309.]

## FOREWORD

The documents in this volume deal with one of the great contests of human history. The American Civil War has already gained a place comparable with struggles, such as the Peloponnesian and Punic wars, or the Great Rebellion in England, which have been an inevitable subject for study through the centuries. The equal balance of forces, the importance of the issues involved, a certain clarity of outline in the nature of the struggle itself, all these have helped to give an unusual dramatic interest to the story. Above all, there are characters in the drama worthy of their place on such a stage, Abraham Lincoln, Robert E. Lee and General 'Stonewall' Jackson.

It is natural enough, then, that the American Civil War should have become a matter of interest to Englishmen, and at this time its study is all the more important. Englishmen who wish to know America must acquaint themselves not only with the bones of its history, the text-book facts and statistics, but also with the details which give that history life. A great period, when men's minds were deeply stirred and they were moved to great endeavours, is one of the proudest possessions of any nation. The lives of the heroes reach their consummation when out of their strife they bring to their descendants a *concordia discors*, and North and South in America find a shared inheritance in these great figures of their history. Some of the documents of this period are part of this common treasure of the American people and should be familiar to any Englishman who values their friendship, the great peroration of Webster's reply to Hayne, Lincoln's debate with Douglas, John Brown's last speech, the Gettysburg Oration, Lincoln's Second Inaugural Address, and Lee's Farewell to the Army of Virginia.

ROBERT BIRLEY

October 1943.

## ACKNOWLEDGEMENT

As before, I should like to acknowledge a particular debt to Professor H. S. Commager, for permission to make use of his great collection, *Documents of American History* (F. S. Crofts & Co., New York).

## A GLOSSARY OF AMERICAN POLITICS

(Certain American political terms are explained in the notes on the several documents. References to these are given in the Indices.)

*A.B.C. Powers.* The Argentine Republic, Brazil, and Chile—the three most important South American States.

*Abolitionists.* See Index, Vol. II.

*American Anti-Slavery Society.* The most important organization of the Abolitionists, founded by Garrison in 1833.

*American Colonization Society.* An organization of Slaveholders who supported gradual emancipation of slaves by founding negro colonies. It founded a settlement for freed slaves in Liberia (West Africa) in 1827.

*American Federation of Labor.* See Index, Vol. III.

*American Legion.* The organization representing the combatants of the war against Germany of 1917-1918.

*American Party.* (See Know-nothing Party.)

*American System.* The name, first used by Henry Clay, for the policy of high protective duties and "internal improvements" (*q.v.*) to support American industries and farmers.

*Anti-Mason Party.* An ephemeral political party founded about 1830 to oppose the Masonic societies. It ran a presidential candidate in 1832.

*Anti-Saloon League.* See Index, Vol. IV.

*Australian Ballot System.* An attempt to overcome certain fraudulent practices in elections. Ballot papers, which contain on a single sheet the names of all candidates and are available only at the polling-booths, are printed by public officials, who supervise the elections.

*Availability.* A presidential candidate who has made few enemies, and is, therefore, often an obscure personage, is said to be "available."

*Black and Tan Convention.* Name given to the Constitutional Convention of Virginia, which met on 3 December 1867, and which included twenty-five negroes out of a hundred and five members.

*Bonus.* Payment, sometimes known as "adjusted compensation," demanded by veterans of the war of 1917-1918.

- These were granted by Congress in 1924 and greatly increased in 1936.
- Boss.* The leader of the party organization in a city or other local district.
- Carpet-baggers.* Citizens of Northern States who came into the ex-Confederate States after the Civil War to organise elections in the Republican interest.
- Caucus.* The directing conferences of members of a particular party in the Senate and the House of Representatives, and similar party conferences in the State Legislatures.
- City Commissioners.* A small board elected to control the legislation and administration of a city. The system of government by a Commission was instituted in Galveston, Texas, in 1900, and has spread widely.
- City Manager System.* The administration of a city is placed in the hands of one man, who is elected to that position by a small Council or Commission elected by the citizens. This system was instituted at Sumter, South Carolina, in 1913, and has spread widely.
- Civilian Conservation Corps.* Bodies of young unemployed workers, set to works of general utility by the Civil Works Administration.
- Civil Works Administration.* An organization set up under the National Recovery Act of 1933 to provide public work for the unemployed.
- Closed Primary.* A primary (*q.v.*) in which steps are taken to see that voters are actually members of the party for whose candidates they are voting.
- Committee for Industrial Organization (C.I.O.).* A labour union, founded by John Lewis in 1936, which organized particularly the unskilled workers. It has been in violent competition with the American Federation of Labor. Its name was changed to "Congress of Industrial Organizations."
- Conservatives.* Those members of the Republican Party who opposed the Congressional policy of Reconstruction after the war.
- Constitutional Union Party.* Name adopted by the Republican Party during the Civil War to cover its alliance with the War Democrats.
- Contrabands.* Negro slaves who escaped to the North from the outbreak of the Civil War. General Butler first declared them to be "contraband of war" and they were formed into labour battalions.
- Copperheads.* The Democrats of the Northern States who

- opposed the Civil War. (From a kind of poisonous snake.)
- County.* The chief administrative subdivision of a State. They vary greatly from State to State in size and in their administrative importance.
- Dark Horse.* A candidate at a National Convention (*q.v.*) who is not widely known.
- Democratic Party.* The name given by its opponents to the Republican Party of Jefferson's supporters. Accepted by Jackson when he stood for the Presidency in 1828.
- Direct Primary.* A primary (*q.v.*) held under public supervision before an election to enable the party voters to choose the candidates of the party at an election.
- Dust Bowl.* The arid western regions of the Great Plains where over-cultivation has led to extensive erosion of the soil.
- Essex Junco.* The Federalists in Massachusetts, mainly the members and supporters of the leading families, who came from Essex County.
- Farmers' Alliances.* Political parties of farmers which arose during the eighteen-eighties. They merged eventually into the Populist Party.
- Farm-Labor Party.* A radical agrarian party which ran candidates at the presidential elections of 1920, 1928, and 1932.
- Favorite.* A candidate at a National Convention (*q.v.*) who is well known throughout the United States.
- Favorite Son.* A candidate at a National Convention (*q.v.*) who is the protégé of a particular State, but is not well known outside it.
- Federal Emergency Relief Administration.* Set up in May 1933 to direct emergency relief to States during the depression.
- Federalists.* Name taken by the supporters of the Constitution during the period when the States were ratifying the Constitution and subsequently by the followers of Alexander Hamilton. After their defeat in 1800 the party gradually disappeared.
- Federal Trade Commission.* A commission of five set up by the Federal Trade Commission Act of 1914 to investigate violations of anti-trust laws and unfair practices in inter-state commerce.
- Filibustering.* An attempt to obstruct the passage of legislation by the undue use of parliamentary privileges in debate, especially by making long and irrelevant speeches. It



- was made difficult in the House of Representatives in 1890, but is still commonly employed in the Senate. A filibuster means a buccaneer.
- Floor Leader.* A member of the party in the Senate of the House of Representatives whose business is to manage the party's contribution to debates and to enforce party discipline.
- Free Soil Party.* A political party formed out of various Abolitionist factions, which nominated Van Buren, an ex-President, as presidential candidate in 1848. They were merged in the new Republican party after 1852.
- General Ticket.* System under which a State votes as a whole, not by districts, for the presidential electors.
- Gerrymander.* The creation by the party in power of electoral districts unequal in size or population in order to make the most use of the votes likely to be cast for that party in an election. The term was derived from Elbridge Gerry, a Massachusetts Democrat, who redistributed the electoral districts of the State in this way. Someone seeing a map of these districts said that one of them looked like a salamander, and was answered, "Say rather a gerrymander."
- Gold Democrats.* Those members of the Democratic Party who opposed the proposal for free silver in the party programme of 1896.
- Governor.* The chief Executive of a State. All Governors, except in Mississippi, are elected by direct popular vote; in twenty-four States for four years, in one for three years, and in twenty-three for two years. The powers and functions of the Governor vary considerably in the different States.
- Grand Army of the Republic.* The organization which pressed the claims, especially political, of the veterans of the Federal Army of the Civil War.
- Grandfather Clause.* See Index, Vol. III.
- Granges.* Societies of farmers, formed in the eighteen-seventies, to press for agrarian reforms, political and economic.
- Granger Laws.* Laws passed at the instigation of the Granges to check abuses in railways and warehouses which affected the farmers' interests.
- Greenback.* Legal tender notes, first authorized by Congress in 1862.
- Greenback Party.* A political party, chiefly of the agrarian interests, which demanded that the Government should meet its obligations with Greenbacks. They nominated

- presidential candidates in 1876, 1880, and 1884, and were eventually merged in the Populist Party.
- Industrial Workers of the World.* The most extreme American labour organization, founded in 1905. It suffered severely in the "red scare" of 1918 and 1919.
- Initiative.* See Index, Vol. III.
- Insular Cases.* A number of cases before the Supreme Court which decided the constitutional position of the possessions gained in the Spanish War.
- Internal Improvements.* Improvements in transport routes, roads, canals, and later railways, undertaken at federal expense.
- Interstate Commerce Commission.* See Index, Vol. III.
- Knights of Columbus.* A Roman Catholic social organization with considerable political influence.
- Knights of Labor.* See Index, Vol. III.
- Know-Nothing Party.* A political party (later called the American Party), standing for opposition to immigrants and Roman Catholics, which appeared in 1854. Its candidate, ex-President Fillmore, won eight electoral votes in 1856.
- Ku Klux Klan.* For the first Ku Klux Klan see Index, Vol. III. A second organisation was founded in the Southern States after the war of 1917-1918 to combat, in particular, Roman Catholicism.
- Lame Ducks.* See Index, Vol. IV.
- Liberty Party.* An Abolitionist political party, originated in New York, which ran a candidate in the presidential elections of 1840 and 1844.
- Logrolling.* Bargaining between politicians to secure co-operation to assist in passing legislation in their particular interests. The term comes from the practice of frontiersmen co-operating to fell trees and pile the logs.
- Machine.* The party organization in a district.
- Mason-Dixon Line.* See Index, Vol. II.
- Monroe Doctrine.* See Index, Vol. II.
- Mugwumps.* Those members of the Republican Party who refused to accept the candidature of Blaine for the Presidency in 1884 and went over to the Democrats. From the translation of the phrase "great captain" in Eliot's Indian Bible.
- National Committee.* The organizing committee of a political party, one of whose main tasks is to manage the National Convention (*q.v.*). It is elected every four years at the end of the National Convention.

*National Convention.* The convention of a political party at which the presidential and vice-presidential candidates are selected and the platform for the election drawn up. It is held in the June or July preceding the election in November.

*National Labor Relations Board.* See Index, Vol. IV.

*National Primary.* The primary (*q.v.*) of the State organizations of a party for the National Convention (*q.v.*).

*National Recovery Administration.* See Index, Vol. IV.

*National Republican Party.* See Whigs.

*National Union Party.* The name taken by the Republican Party during the Civil War to cover the alliance with the War Democrats.

*New Deal.* Name given to the policy of reform carried out by President Franklin Roosevelt and the Democratic Party since 1933.

*New Freedom.* Name given to the policy of reform carried out by President Wilson and the Democratic Party after his election in 1912.

*Non-Partisan League.* An agrarian party which flourished in the last years of the nineteenth century, particularly in the Dakotas.

*Omnibus States.* Six western States, Idaho, Montana, North and South Dakota, Washington, and Wyoming, which became States in 1889 and 1890.

*Open Primary.* The system of organizing a primary (*q.v.*) under which any voter may participate whether or not he is a member of the party.

*Pocket Veto.* When the President withholds his signature to a Bill, though not actually vetoing it, and the session of Congress comes to an end before the ten days in which he may return it, the Bill does not become law.

*Populist Party.* See Index, Vol. III.

*Pork-barrel.* Bills in Congress making appropriations for local districts, supported by the member representing that district in order to gain favour with his constituents. From the pork-barrel, the contents of which used by custom to be distributed at certain times to the negroes on the slave estates of the South.

*Primary.* The election within a political party of candidates to be nominated in an election. In all States these primary elections are now regulated by State legislation.

*Progressive Party—*

(i) The party formed by the followers of Theodore Roosevelt in 1912.

- (ii) The party formed for the presidential election of 1924 to support the candidature of Senator La Follette. (Its full name was the Conference for Progressive Political Action.)
- Public Works Administration.* See Index, Vol. IV.
- Recall.* See Index, Vol. III.
- Reconstruction Finance Corporation.* A body set up in 1932 to aid farmers by export agencies and the extension of credit.
- Referendum.* See Index, Vol. III.
- Republican Party.* (i) The political party supporting Jefferson in the early years of the Republic. After the disappearance of the Federalist Party it began to disintegrate, and in 1828 the faction which supported Jackson took the name of Democrats, which had always also been applied to the party, at first in derision.
- (ii) The political party formed in 1854 after the passage of the Kansas-Nebraska Act. Based at first on opposition to Slavery, it soon absorbed the various Abolitionist parties and in a few years most of the Whigs (*q.v.*) in the Northern States.
- Riders.* Measures attached to appropriation bills, which the President cannot veto, in order to overcome a threatened veto.
- Rings.* Combinations of politicians of one party in a district to control and organize the party in that district and the power and patronage it may wield.
- Rules Committee.* The Committee of the House of Representatives which decides the order in which bills shall be debated, and how long the debate shall last.
- Scalawag.* A renegade. Name given to Republican supporters in Southern States during the period of Reconstruction.
- Sheriff.* The chief police officer of a county (*q.v.*) elected by popular vote, except in Rhode Island, where he is appointed by the Governor.
- Short Ballot.* A system by which only a limited number of officials are elected by popular vote on one voting paper.
- Silver Democrats.* Those members of the Democratic Party who supported the policy of free silver, especially under the leadership of W. J. Bryan, in the presidential election of 1896.
- Slip Ticket.* A list, printed on a long strip of paper, of the persons, all belonging to one party, recommended by the party politicians for election to the large number of positions filled by popular vote. The ticket would be accepted as a whole, and used as a voting paper. The

- abuse of this system led to the reforms of the Australian Ballot (*q.v.*) and the Short Ballot (*q.v.*).
- Social Security Board.* See Index, Vol. IV.
- Speaker.* The Speaker of the House of Representatives, who presides over its debates, is an active party politician, and exercises considerable influence over the course of the debates in the interest of the party in the majority.
- Spoils System.* See Index, Vols. II and III.
- State Convention.* A party convention composed of delegates from local districts, who nominate candidates for State elections. Connecticut, Rhode Island, and New Mexico are the only States in which these conventions are now allowed, but in others a State Convention is held to select the delegates to the National Convention (*q.v.*).
- Steering Committee.* A committee of the members of a party in the House of Representatives who take general control of the actions of the party in the House.
- Tammany Hall.* The most famous of the political machines, that of the Democratic Party in New York. Founded during the eighteenth century, it was at first a social organization. It supported the Jeffersonian Republicans in the election of 1800 and gained control of the party machine in New York City within the next thirty years. Though its power is not what it was, it still has to be reckoned with.
- Tennessee Valley Administration.* See Index, Vol. IV.
- Township.* An area of local government. In New England, where the term used is Town, it forms an area of some twenty to forty square miles. In some of the Southern States the system of the Township has been introduced but is not of such importance. In the Middle and Western States the system exists, but the administrative importance of the Township varies, being much greater in those States which received a large proportion of immigrants from New England.
- Underground Railway.* The Abolitionist organization which enabled fugitive slaves to escape to Canada.
- Union Leagues.* Founded in Northern cities during the Civil War to sustain warlike enthusiasm. After the war they were formed in the South to organize the Republican voters, of whom many were negroes. They were often called Loyal Leagues.
- Veterans.* A general name for ex-soldiers and sailors of the War of 1917-1918, including many thousands who had never crossed the Atlantic.

*War Democrats.* Members of the Democratic Party in the Northern and Border States who supported the Union in the Civil War.

*War Hawks.* See Index, Vol. I.

*Whigs.* The opponents of Jackson, who nominated Henry Clay as candidate for the presidential election of 1832, took the title of National Republicans, which was soon changed to Whigs. The party disintegrated after a severe defeat in 1852.

*Women's Christian Temperance Union.* See Index, Vol. IV.

*Workingmen's Party.* The first American labour party, founded in Philadelphia in 1828. It had a great success in the New York City Elections of 1829, but broke up soon afterwards.

*Works Progress Administration.* See Index, Vol. IV.



## 1. THE RUSH-BAGOT AGREEMENT,

1818

[The progress of the war of 1812-1814 had depended gely on the naval struggle on the Great Lakes. In spite of this, in February 1815 Congress empowered the President to sell or lay up the American warships on the Lakes not needed for enforcing the customs laws. When it was rumoured that Great Britain intended to continue construction, Madison proposed a mutual disarmament. Castlereagh, the British Foreign Secretary, approved of the principle, and an agreement was negotiated and notes exchanged between Richard Rush, the American Secretary of State, and Sir Charles Bagot, the British Minister in Washington, in April 1818.

This agreement may fairly be described as the most successful disarmament convention in history, and the foundation of Anglo-American friendship.]

### ARRANGEMENT

*BETWEEN, the United States and Great Britain, between Richard Rush, Esq., acting as Secretary of the Department of State, and Charles Bagot, His Britannic Majesty's Envoy Extraordinary, &c.*

The naval force to be maintained upon the American lakes, by his majesty and the government of the United States, shall henceforth be confined to the following vessels on each side; that is—

On lake Ontario, to one vessel not exceeding one hundred tons burden, and armed with one eighteen pound cannon.

On the upper lakes, to two vessels, not exceeding like burden each, and armed with like force.

On the waters of lake Champlain, to one vessel not exceeding like burden, and armed with like force.

All other armed vessels on these lakes shall be forthwith dismantled, and no other vessels of war shall be there built or armed.



If either party should hereafter be desirous of annulling this stipulation, and should give notice to that effect to the other party, it shall cease to be binding after the expiration of six months from the date of such notice.

The naval force so to be limited shall be restricted to such services as will, in no respect, interfere with the proper duties of the armed vessels of the other party.

## 2. McCULLOCH *v.* MARYLAND, 1819

[The second Bank of the United States, established in 1817, was very unpopular in several States, and the legislature of Maryland attacked the branch of the Bank at Baltimore by passing a State law taxing any bank established 'without authority from the State'. In 1818 the State had sued McCulloch, the cashier of the Baltimore Branch of the Bank, and the case came before the Supreme Court. The points at issue were the questions whether the Act incorporating the Bank was constitutional, and whether, if so, the State had the right, under the powers reserved to it by the Constitution, to tax the operations of the Bank. Underlying these was the question where supremacy lay in case of conflict between the laws enacted by the Government and those of the individual States.

Marshall's judgement dealt first with the underlying issue, and proclaimed the doctrine of the ultimate supremacy of the Federal Government under the Constitution, as against the argument that the powers of that Government were merely delegated to it by the States. When considering the constitutional validity of the Act incorporating the Bank, Marshall made use of Article I, Section 8, of the Constitution, which gave Congress power 'to make all Laws which shall be *necessary and proper* for carrying into execution the foregoing powers and all other powers vested by the Constitution in the Government of the United States'. The opponents of the Bank had claimed that these words limited the power of Congress to pass only such laws as were definitely necessary for the fulfilment of its constitutional functions. Marshall held that the clause 'is placed among the powers of Congress, not among the limitations of its powers. Its terms purport to enlarge, not to diminish the powers vested in the government'.

(This was the famous 'loose construction'.) Finally he dealt with the claim of the State to tax the Bank. The right of a State to tax and thereby to destroy an institution constitutionally established by the Government of the United States would mean, in fact, the transference of supremacy from the National Government to the States, and this would be in itself contrary to the Constitution.

Lord Bryce summed up Marshall's main contributions to American constitutional theory as follows: First, 'every power alleged to be vested in the National Government must be affirmatively shown to have been granted. . . . The search for power will be conducted in a spirit of strict exactitude, and if there be found in the Constitution nothing which directly or implicitly conveys it, then whatever the executive or legislature of the National Government may have done in the persuasion of its existence, must be deemed null and void'. (See his verdict in *Marbury v. Madison*, vol. I, No. 18.) And second, 'When once the grant of a power by the people to a National Government has been established, that power will be construed generously. . . . The people, when they confer a power, must be deemed to confer a wide discretion as to the means whereby it is to be used in their service. For their main object is that it should be used vigorously and wisely, which it cannot be if the choice of methods is narrowly restricted.']

MARSHALL, C. J. In the case now to be determined, the defendant, a sovereign State, denies the obligation of a law enacted by the legislature of the Union, and the plaintiff, on his part, contests the validity of an Act which has been passed by the legislature of that State. The constitution of our country, in its most interesting and vital parts, is to be considered; the conflicting powers of the Government of the Union and of its members, as marked in that constitution, are to be discussed; and an opinion given, which may essentially influence the great operations of the government. No tribunal can approach such a question without a deep sense of its importance, and of the awful responsibility involved in its decision. But it must be decided peacefully, or remain a source of hostile legislation, perhaps of hostility of a still more serious nature; and if it is to be so decided, by this tribunal alone can the decision be

made. On the Supreme Court of the United States has the constitution of our country devolved this important duty.

The first question made in this cause is, has Congress power to incorporate a bank? . . .

The power now contested was exercised by the first Congress elected under the present constitution. The bill for incorporating the bank of the United States did not steal upon an unsuspecting legislature, and pass unobserved. Its principle was completely understood, and was opposed with equal zeal and ability. After being resisted, first in the fair and open field of debate, and afterwards in the executive cabinet, with as much persevering talent as any measure has ever experienced, and being supported by arguments which convinced minds as pure and as intelligent as this country can boast, it became a law. The original Act was permitted to expire; but a short experience of the embarrassments to which the refusal to revive it exposed the government, convinced those who were most prejudiced against the measure of its necessity, and induced the passage of the present law. It would require no ordinary share of intrepidity to assert that a measure adopted under these circumstances was a bold and plain usurpation, to which the constitution gave no countenance. . . .

In discussing this question, the counsel for the State of Maryland have deemed it of some importance, in the construction of the constitution, to consider that instrument not as emanating from the people, but as the act of sovereign and independent States. The powers of the general government, it has been said, are delegated by the States, who alone are truly sovereign; and must be exercised in subordination to the States, who alone possess supreme dominion.

It would be difficult to sustain this proposition. The Convention which framed the constitution was, indeed, elected by the State legislatures. But the instrument, when it came from their hands, was a mere proposal, without obligation, or pretensions to it. It was reported to the then existing Congress of the United States, with

a request that it might 'be submitted to a convention of Delegates, chosen in each State by the people thereof, under the recommendation of its legislature, for their assent and ratification'. This mode of proceeding was adopted; and by the Convention, by Congress, and by the State legislatures, the instrument was submitted to the people. They acted upon it in the only manner in which they can act safely, effectively, and wisely, on such a subject, by assembling in Convention. It is true, they assembled in their several States—and where else should they have assembled? No political dreamer was ever wild enough to think of breaking down the lines which separate the States, and of compounding the American people into one common mass. Of consequence, when they act, they act in their States. But the measures they adopt do not, on that account, cease to be the measures of the people themselves, or become the measures of the State governments.

From these Conventions the constitution derives its whole authority. The government proceeds directly from the people; is 'ordained and established' in the name of the people; and is declared to be ordained, 'in order to form a more perfect union, establish justice, insure domestic tranquillity, and secure the blessings of liberty to themselves and to their posterity'. The assent of the States, in their sovereign capacity, is implied in calling a Convention, and thus submitting that instrument to the people. But the people were at perfect liberty to accept or reject it; and their act was final. It required not the affirmance, and could not be negatived, by the State governments. The constitution, when thus adopted, was of complete obligation, and bound the State sovereignties. . . .

. . . The government of the Union, then (whatever may be the influence of this fact on the case), is emphatically and truly a government of the people. In form and in substance it emanates from them, its powers are granted by them, and are to be exercised directly on them, and for their benefit.

This government is acknowledged by all to be one of

enumerated powers. The principle, that it can exercise only the powers granted to it, would seem too apparent to have required to be enforced by all those arguments which its enlightened friends, while it was depending before the people, found it necessary to urge. That principle is now universally admitted. But the question respecting the extent of the powers actually granted is perpetually arising, and will probably continue to arise, as long as our system shall exist. In discussing these questions, the conflicting powers of the State and general governments must be brought into view, and the supremacy of their respective laws, when they are in opposition, must be settled.

If any one proposition could command the universal assent of mankind, we might expect it would be this: that the government of the Union, though limited in its powers, is supreme within its sphere of action. This would seem to result necessarily from its nature. It is the government of all; its powers are delegated by all; it represents all, and acts for all. Though any one State may be willing to control its operations, no State is willing to allow others to control them. The nation, on those subjects on which it can act, must necessarily bind its component parts. But this question is not left to mere reason: the people have, in express terms, decided it, by saying, 'this constitution, and the laws of the United States, which shall be made in pursuance thereof', 'shall be the supreme law of the land', and by requiring that the members of the State legislatures, and the officers of the executive and judicial departments of the States, shall take the oath of fidelity to it.

The government of the United States, then, though limited in its powers, is supreme; and its laws, when made in pursuance of the constitution, form the supreme law of the land, 'anything in the constitution or laws of any State, to the contrary, notwithstanding'.

Among the enumerated powers, we do not find that of establishing a bank or creating a corporation. But there is no phrase in the instrument which, like the articles of confederation, excludes incidental or implied

powers; and which requires that everything granted shall be expressly and minutely described. Even the 10th Amendment, which was framed for the purpose of quieting the excessive jealousies which had been excited, omits the word 'expressly', and declares only that the powers 'not delegated to the United States, nor prohibited to the States, are reserved to the States or to the people'; thus leaving the question, whether the particular power which may become the subject of contest, has been delegated to the one government, or prohibited to the other, to depend on a fair construction of the whole instrument. The men who drew and adopted this amendment, had experienced the embarrassments resulting from the insertion of this word in the articles of confederation, and probably omitted it to avoid those embarrassments. A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves. That this idea was entertained by the framers of the American constitution, is not only to be inferred from the nature of the instrument, but from the language. Why else were some of the limitations, found in the 9th section of the first article, introduced? It is also, in some degree, warranted by their having omitted to use any restrictive term which might prevent its receiving a fair and just interpretation. In considering this question, then, we must never forget that it is *a constitution* we are expounding.

Although, among the enumerated powers of government, we do not find the word 'bank', or 'incorporation,' we find the great powers to lay and collect taxes; to borrow money; to regulate commerce; to declare

and conduct a war; and to raise and support armies and navies. The sword and the purse, all the external relations, and no inconsiderable portion of the industry of the nation, are intrusted to its government. It can never be pretended that these vast powers draw after them others of inferior importance, merely because they are inferior. Such an idea can never be advanced. But it may, with great reason, be contended, that a government, intrusted with such ample powers, on the due execution of which the happiness and prosperity of the nation so vitally depends, must also be intrusted with ample means for their execution. The power being given, it is the interest of the nation to facilitate its execution. It can never be their interest, and cannot be presumed to have been their intention, to clog and embarrass its execution by withholding the most appropriate means. Throughout this vast republic, from the St. Croix to the Gulph of Mexico, from the Atlantic to the Pacific, revenue is to be collected and expended, armies are to be marched and supported. The exigencies of the nation may require, that the treasure raised in the north should be transported to the south, *that* raised in the east conveyed to the west, or that this order should be reversed. Is the construction of the constitution to be preferred which would render these operations difficult, hazardous, and expensive? Can we adopt that construction (unless the words imperiously require it) which would impute to the framers of that instrument, when granting these powers for the public good, the intention of impeding their exercise by withholding a choice of means? If, indeed, such be the mandate of the constitution, we have only to obey; but that instrument does not profess to enumerate the means by which the powers it confers may be executed; nor does it prohibit the creation of a corporation, if the existence of such a being be essential to the beneficial exercise of those powers. It is, then, the subject of fair inquiry, how far such means may be employed.

It is not denied that the powers given to the govern-

ment imply the ordinary means of execution. That, for example, of raising revenue and applying it to national purposes, is admitted to imply the power of conveying money from place to place, as the exigencies of the nation may require, and of employing the usual means of conveyance. But it is denied that the government has its choice of means, or that it may employ the most convenient means, if to employ them it be necessary to erect a corporation.

On what foundation does this argument rest? On this alone: The power of creating a corporation, is one appertaining to sovereignty, and is not expressly conferred on Congress. This is true. But all legislative powers appertain to sovereignty. The original power of giving the law on any subject whatever, is a sovereign power; and if the government of the Union is restrained from creating a corporation, as a means for performing its functions, on the single reason that the creation of a corporation is an act of sovereignty; if the sufficiency of this reason be acknowledged, there would be some difficulty in sustaining the authority of Congress to pass other laws for the accomplishment of the same objects.

The government which has a right to do an act, and has imposed on it the duty of performing that act, must, according to the dictates of reason, be allowed to select the means; and those who contend that it may not select any appropriate means, that one particular mode of affecting the object is excepted, take upon themselves the burden of establishing that exception. . . .

But the constitution of the United States has not left the right of Congress to employ the necessary means, for the execution of the powers conferred on the government, to general reasoning. To its enumeration of powers is added that of making 'all laws which shall be necessary and proper, for carrying into execution the foregoing powers, and all other powers vested by this constitution, in the government of the United States, or in any department thereof'. . . .

But the argument on which most reliance is placed, is drawn from the peculiar language of this clause.



Congress is not empowered by it to make all laws, which may have relation to the powers conferred on the government, but such only as may be '*necessary and proper*' for carrying them into execution. The word '*necessary*' is considered as controlling the whole sentence, and as limiting the right to pass laws for the execution of the granted powers, to such as are indispensable, and without which the power would be nugatory. That it excludes the choice of means, and leaves to Congress, in each case, that only which is most direct and simple.

Is it true, that this is the sense in which the word '*necessary*' is always used? Does it always import an absolute physical necessity, so strong, that one thing, to which another may be termed necessary cannot exist without that other? We think it does not. If reference be had to its use, in the common affairs of the world, or in approved authors, we find that it frequently imports no more than that one thing is convenient, or useful, or essential to another. To employ the means necessary to an end, is generally understood as employing any means calculated to produce the end, and not as being confined to those single means, without which the end would be entirely unattainable. Such is the character of human language, that no word conveys to the mind, in all situations one single definite idea; and nothing is more common than to use words in a figurative sense. Almost all compositions contain words, which, taken in their rigorous sense, would convey a meaning different from that which is obviously intended. It is essential to just construction, that many words which import something excessive, should be understood in a more mitigated sense—in that sense which common usage justifies. The word '*necessary*' is of this description. It has not a fixed character peculiar to itself. It admits of all degrees of comparison; and is often connected with other words, which increase or diminish the impression the mind receives of the urgency it imports. A thing may be necessary, very necessary, absolutely or indispensably necessary. To no mind would

the same idea be conveyed, by these several phrases. This comment on the word is well illustrated, by the passage cited at the Bar, from the 10th section of the 1st article of the constitution. It is, we think, impossible to compare the sentence which prohibits a State from laying 'imposts, or duties on imports or exports, except what may be *absolutely* necessary for executing its inspection laws', with that which authorizes Congress 'to make all laws which shall be necessary and proper for carrying into execution' the powers of the general government, without feeling a conviction that the convention understood itself to change materially the meaning of the word 'necessary' by prefixing the word 'absolutely'. This word, then, like others, is used in various senses; and, in its construction, the subject, the context, the intention of the person using them, are all to be taken into view.

Let this be done in the case under consideration. The subject is the execution of those great powers on which the welfare of a nation essentially depends. It must have been the intention of those who gave these powers, to insure, as far as human prudence could insure, their beneficial execution. This could not be done by confiding the choice of means to such narrow limits as not to leave it in the power of Congress to adopt any which might be appropriate, and which were conducive to the end. This provision is made in a constitution intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs. To have proscribed the means by which government should, in all future time, execute its powers, would have been to change, entirely, the character of the instrument, and give it the properties of a legal code. It would have been an unwise attempt to provide, by immutable rules, for exigencies which, if foreseen at all, must have been seen dimly, and which can be best provided for as they occur. To have declared that the best means shall not be used, but those alone without which the power given would be nugatory, would have been to deprive the legislature of the

capacity to avail itself of experience, to exercise its reason, and to accommodate its legislation to circumstances.

If we apply this principle . . .

The baneful influence of this narrow construction on all the operations of the government, and the absolute impracticability of maintaining it without rendering the government incompetent to its great objects, might be illustrated by numerous examples drawn from the constitution, and from our laws. The good sense of the public has pronounced, without hesitation, that the power of punishment appertains to sovereignty, and may be exercised whenever the sovereign has a right to act, as incidental to his constitutional powers. It is a means for carrying into execution all sovereign powers, and may be used, although not indispensably necessary. It is a right incidental to the power, and conducive to its beneficial exercise. . . .

But the argument which most conclusively demonstrates the error of the construction contended for by the counsel for the State of Maryland, is founded on the intention of the Convention, as manifested in the whole clause. To waste time and argument in proving that, without it, Congress might carry its powers into execution, would be not much less idle than to hold a lighted taper to the sun. As little can it be required to prove, that in the absence of this clause, Congress would have some choice of means. That it might employ those which, in its judgment, would most advantageously effect the object to be accomplished. That any means adapted to the end, any means which tended directly to the execution of the constitutional powers of the government, were in themselves constitutional.

This clause, as construed by the State of Maryland, would abridge and almost annihilate this useful and necessary right of the legislature to select its means. That this could not be intended is, we should think, had it not been already controverted, too apparent for controversy.

We think so for the following reasons :

1st. The clause is placed among the powers of Congress, not among the limitations on those powers.

2nd. Its terms purport to enlarge, not to diminish the powers vested in the government. It purports to be an additional power, not a restriction on those already granted. No reason has been, or can be assigned for thus concealing an intention to narrow the discretion of the national legislature under words which purport to enlarge it. The framers of the constitution wished its adoption, and well knew that it would be endangered by its strength, not by its weakness. Had they been capable of using language which would convey to the eye one idea, and, after deep reflection, impress on the mind another, they would rather have disguised the grant of power, than its limitation. If, then, their intention had been, by this clause, to restrain the free use of means which might otherwise have been implied, that intention would have been inserted in another place, and would have been expressed in terms resembling these. 'In carrying into execution the foregoing powers, and all others,' &c. 'no laws shall be passed but such as are necessary and proper.' Had the intention been to make this clause restrictive, it would unquestionably have been so in form as well as in effect.

The result of the most careful and attentive consideration bestowed upon this clause is, that if it does not enlarge, it cannot be construed to restrain the powers of Congress, or to impair the right of the legislature to exercise its best judgment in the selection of measures to carry into execution the constitutional powers of the government. If no other motive for its insertion can be suggested, a sufficient one is found in the desire to remove all doubts respecting the right to legislate on that vast mass of incidental powers which must be involved in the constitution, if that instrument be not a splendid bauble.

We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of

the constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional. . . .

If a corporation may be employed indiscriminately with other means to carry into execution the powers of the government, no particular reason can be assigned for excluding the use of a bank, if required for its fiscal operations. To use one, must be within the discretion of Congress, if it be an appropriate mode of executing the powers of government. That it is a convenient, a useful, and essential instrument in the prosecution of its fiscal operations, is not now a subject of controversy. . . .

But were its necessity less apparent, none can deny its being an appropriate measure; and if it is, the degree of its necessity as has been very justly observed, is to be discussed in another place. Should Congress, in the execution of its powers, adopt measures which are prohibited by the constitution; or should Congress, under the pretext of executing its powers, pass laws for the accomplishment of objects not intrusted to the government, it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say that such an act was not the law of the land. But where the law is not prohibited, and is really calculated to effect any of the objects intrusted to the government, to undertake here to inquire into the degree of its necessity, would be to pass the line which circumscribes the judicial department, and to tread on legislative ground. This court disclaims all pretensions to such a power. . . .

After the most deliberate consideration, it is the unanimous and decided opinion of this court, that the Act to incorporate the Bank of the United States is a

law made in pursuance of the constitution, and is a part of the supreme law of the land.

The branches, proceeding from the same stock, and being conducive to the complete accomplishment of the object, are equally constitutional. It would have been unwise to locate them in the charter, and it would be unnecessarily inconvenient to employ the legislative power in making those subordinate arrangements. The great duties of the bank are prescribed; those duties require branches; and the bank itself may, we think, be safely trusted with the selection of places where those branches shall be fixed; reserving always to the government the right to require that a branch shall be located where it may be deemed necessary.

It being the opinion of the Court, that the Act incorporating the bank is constitutional; and that the power of establishing a branch in the State of Maryland might be properly exercised by the bank itself, we proceed to inquire—

2. Whether the State of Maryland may, without violating the constitution, tax that branch?

That the power of taxation is one of vital importance; that it is retained by the States; that it is not abridged by the grant of a similar power to the government of the Union; that it is to be concurrently exercised by the two governments: are truths which have never been denied. But, such is the paramount character of the constitution, that its capacity to withdraw any subject from the action of even this power, is admitted. The States are expressly forbidden to lay any duties on imports or exports, except what may be absolutely necessary for executing their inspection laws. If the obligation of this prohibition must be conceded—if it may restrain a State from the exercise of its taxing power on imports and exports, the same paramount character would seem to restrain, as it certainly may restrain, a State from such other exercise of this power, as is in its nature incompatible with, and repugnant to, the constitutional laws of the Union. A law, absolutely

repugnant to another, as entirely repeals that other as if express terms of repeal were used.

On this ground the counsel for the bank place its claim to be exempted from the power of a State to tax its operations. There is no express provision for the case, but the claim has been sustained on a principle which so entirely pervades the constitution, is so intermixed with the materials which compose it, so interwoven with its web, so blended with its texture, as to be incapable of being separated from it, without rending it into shreds.

This great principle is, that the constitution and the laws made in pursuance thereof are supreme; that they control the constitution and laws of the respective States, and cannot be controlled by them. From this, which may be almost termed an axiom, other propositions are deduced as corollaries, on the truth or error of which, and on their application to this case, the cause has been supposed to depend. These are: (1) That a power to create implies a power to preserve. (2) That a power to destroy, if wielded by a different hand, is hostile to, and incompatible with, these powers to create and preserve. (3) That where this repugnancy exists, that authority which is supreme must control, not yield to that over which it is supreme. . . .

The power of Congress to create, and of course to continue, the bank, was the subject of the preceding part of this opinion; and is no longer to be considered as questionable. . . .

That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance, in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control, are propositions not to be denied. But all inconsistencies are to be reconciled by the magic of the word *CONFIDENCE*. Taxation, it is said, does not necessarily and unavoidably destroy. To carry it to the excess of

destruction would be an abuse, to presume which, would banish that confidence which is essential to all government.

But is this a case of confidence? Would the people of any one State trust those of another with a power to control the most insignificant operations of their State government? We know they would not. Why, then, should we suppose that the people of any one State should be willing to trust those of another with a power to control the operations of a government to which they have confided their most important and most valuable interests? In the legislature of the Union alone, are all represented. The legislature of the Union alone, therefore, can be trusted by the people with the power of controlling measures which concern all, in the confidence that it will not be abused. This, then, is not a case of confidence, and we must consider it as it really is.

If we apply the principle for which the State of Maryland contends, to the constitution generally, we shall find it capable of changing totally the character of that instrument. We shall find it capable of arresting all the measures of the government, and of prostrating it at the foot of the States. The American people have declared their constitution, and the laws made in pursuance thereof, to be supreme; but this principle would transfer the supremacy, in fact, to the States.

If the States may tax one instrument, employed by the government in the execution of its powers, they may tax any and every other instrument. They may tax the mail; they may tax the mint; they may tax patent rights; they may tax the papers of the custom-house; they may tax judicial process; they may tax all the means employed by the government, to an excess which would defeat all the ends of government. This was not intended by the American people. They did not design to make their government dependent on the States. . . .

It has also been insisted, that, as the power of taxation in the general and State governments is acknowledged to be concurrent, every argument which would sustain the right of the general government to tax banks



chartered by the States, will equally sustain the right of the States to tax banks chartered by the general government.

But the two cases are not on the same reason. The people of all the States have created the general government, and have conferred upon it the general power of taxation. The people of all the States, and the States themselves, are represented in Congress, and, by their representatives, exercise this power. When they tax the chartered institutions of the States, they tax their constituents; and those taxes must be uniform. But when a State taxes the operations of the government of the United States, it acts upon institutions created, not by their own constituents, but by people over whom they claim no control. It acts upon the measures of government created by others as well as themselves, for the benefit of others in common with themselves. The difference is that which always exists, and always must exist, between the action of the whole on a part, and the action of a part on the whole—between the laws of a government declared to be supreme, and those of a government which, when in opposition to those laws, is not supreme. . . .

The Court has bestowed on this subject its most deliberate consideration. The result is a conviction that the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government. This is, we think, the unavoidable consequence of that supremacy which the constitution has declared. We are unanimously of opinion, that the law passed by the legislature of Maryland, imposing a tax on the Bank of the United States, is unconstitutional and void. . . .

Judgment reversed.

### 3. DARTMOUTH COLLEGE *v.* WOODWARD, 1819

[In 1769 the Governor of New Hampshire had granted a Royal Charter to Dartmouth College, placing it under the control of a body of independent trustees. In 1816 the legislature of New Hampshire passed an Act amending the original Charter, which in effect placed the College under the control of the legislature of the State.

Marshall's judgement in favour of the College and declaring the Act of the legislature invalid was based on the clause in Article I, Section 9, of the constitution, which decreed that 'no State shall pass any Law impairing the obligation of Contracts'. The decision had most important results for the development of American education, but its eventual effects were a great deal more far-reaching. Applied to business corporations, it served as a shield to the rising American business interests against action by the State. In the words of Sir Henry Maine, it was to be 'the bulwark of American individualism against democratic impatience and socialistic fantasy'.]

MARSHALL, C.J.:

... This court can be insensible neither to the magnitude nor delicacy of this question. The validity of a legislative Act is to be examined; and the opinion of the highest law tribunal of a State is to be revised: an opinion which carries with it intrinsic evidence of the diligence, of the ability, and the integrity with which it was formed.

On more than one occasion, this Court has expressed the cautious circumspection with which it approaches the consideration of such questions; and has declared, that, in no doubtful case, would it pronounce a legislative Act to be contrary to the constitution. But the American people have said, in the constitution of the United States, that 'no State shall pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts'. In the same instrument they have also said, 'that the judicial power shall extend to all cases in law and equity arising under the constitution'.

On the judges of this Court, then, is imposed the high and solemn duty of protecting, from even legislative violation, those contracts which the constitution of our country has placed beyond legislative control; and, however irksome the task may be, this is a duty from which we dare not shrink.

It can require no argument to prove that the circumstances of this case constitute a contract. An application is made to the crown for a charter to incorporate a religious and literary institution. In the application it is stated that large contributions have been made for the object, which will be conferred on the corporation as soon as it shall be created. The charter is granted, and on its faith the property is conveyed. Surely in this transaction every ingredient of a complete and legitimate contract is to be found. The points for consideration are, 1. Is this contract protected by the constitution of the United States? 2. Is it impaired by the Acts under which the defendant holds?

1. On the first point it has been argued that the word 'contract', in its broadest sense, would comprehend the political relations between the government and its citizens, would extend to offices held within a State for State purposes, and to many of those laws concerning civil institutions, which must change with circumstances, and be modified by ordinary legislation; which deeply concern the public, and which, to preserve good government, the public judgement must control. That even marriage is a contract, and its obligations are affected by the laws respecting divorces. That the clause in the constitution, if construed in its greatest latitude, would prohibit these laws. Taken in its broad, unlimited sense, the clause would be an unprofitable and vexatious interference with the internal concerns of a State, would unnecessarily and unwisely embarrass its legislation, and render immutable those civil institutions which are established for purposes of internal government, and which, to subserve those purposes, ought to vary with varying circumstances. That as the framers of the constitution could never have

intended to insert in that instrument a provision so unnecessary, so mischievous, and so repugnant to its general spirit, the term 'contract' must be understood in a more limited sense. That it must be understood as intended to guard against a power of at least doubtful utility, the abuse of which had been extensively felt, and to restrain the legislature in future from violating the right to property. That anterior to the formation of the constitution, a course of legislation had prevailed in many, if not in all, of the States, which weakened the confidence of man in man, and embarrassed all transactions between individuals, by dispensing with a faithful performance of engagements. To correct this mischief, by restraining the power which produced it, the State legislatures were forbidden 'to pass any law impairing the obligation of contracts', that is, of contracts respecting property, under which some individual could claim a right to something beneficial to himself; and that, since the clause in the constitution must in construction receive some limitation, it may be confined, and ought to be confined, to cases of this description, to cases within the mischief it was intended to remedy.

The general correctness of these observations cannot be controverted. That the framers of the constitution did not intend to restrain the States in the regulation of their civil institutions, adopted for internal government, and that the instrument they have given us is not to be so construed, may be admitted. The provision of the constitution never has been understood to embrace other contracts than those which respect property or some object of value, and confer rights which may be asserted in a court of justice. It has never been understood to restrict the general right of the legislature to legislate on the subject of divorces.

Those Acts enable some tribunal, not to impair a marriage contract, but to liberate one of the parties because it has been broken by the other. When any State legislature shall pass an Act annulling all marriage contracts, or allowing either party to annul it without

the consent of the other, it will be time enough to inquire, whether such an Act be constitutional.

The parties in this case differ less on general principles, less on the true construction of the constitution in the abstract, than on the application of those principles to this case, and on the true construction of the charter of 1769. This is the point on which the cause essentially depends. If the Act of incorporation be a grant of political power, if it create a civil institution to be employed in the administration of the government, or if the funds of the college be public property, or if the State of New Hampshire, as a government, be alone interested in its transactions, the subject is one in which the legislature of the State may act according to its own judgment, unrestrained by any limitation of its power imposed by the constitution of the United States.

But if this be a *private eleemosynary institution*, endowed with a capacity to take property for objects *unconnected with government*, whose funds are bestowed by individuals on the faith of the charter; if the donors have stipulated for the future disposition and management of those funds in the manner prescribed by themselves; there may be more difficulty in the case, although neither the persons who have made these stipulations, nor those for whose benefit they were made, should be parties to the cause. Those who are no longer interested in the property may yet retain such an interest in the preservation of their own arrangements as to have a right to insist that those arrangements shall be held sacred. Or, if they have themselves disappeared, it becomes a subject of serious and anxious inquiry whether those whom they have legally empowered to represent them forever may not assert all the rights which they possessed while in being; whether, if they be without personal representatives who may feel injured by a violation of the compact, the trustees be not so completely their representatives in the eye of the law as to stand in their place, not only as respects the government of the college, but also as respects the maintenance of the college charter. It becomes then the duty of

the court most seriously to examine this charter, and to ascertain its true character. . . .

Whence, then, can be derived the idea that Dartmouth College has become a public institution, and its trustees public officers? Not from the source whence its funds were drawn; for its foundation is purely private and eleemosynary—not from the application of those funds, for money may be given for education and the persons receiving it do not, by being employed in the education of youth, become members of the civil government. Is it from the Act of incorporation? Let this subject be considered.

A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly, or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality, and, if the expression may be allowed, individuality; properties, by which a perpetual succession of many persons are considered as the same, and may act as a single individual. They enable a corporation to manage its own affairs, and to hold property without the perplexing intricacies, the hazardous and endless necessity, of perpetual conveyances for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men in succession with these qualities and capacities that corporations were invented and are in use. By these means, a perpetual succession of individuals are capable of acting for the promotion of the particular object, like one immortal being. But this being does not share in the civil government of the country, unless that be the purpose for which it was created. Its immortality no more confers on it political power, or a political character, than immortality would confer such power or character on a natural person. It is no more a State instrument, than a natural person exercising the same powers would be. If,

then, a natural person, employed by individuals in the education of youth, or for the government of a seminary in which youth is educated, would not become a public officer, or be considered as a member of the civil government, how is it, that this artificial being, created by law, for the purpose of being employed by the same individuals for the same purposes, should become a part of the civil government of the country? Is it because its existence, its capacities, its powers, are given by law? Because the government has given it the power to take and to hold property in a particular form, and for particular purposes, has the government a consequent right substantially to change that form, or to vary the purposes to which the property is to be applied? This principle has never been asserted or recognized, and is supported by no authority. Can it derive aid from reason?

The objects for which a corporation is created are universally such as the government wishes to promote. They are deemed beneficial to the country; and this benefit constitutes the consideration, and, in most cases, the sole consideration of the grant. In most eleemosynary institutions, the object would be difficult, perhaps unattainable, without the aid of a charter of incorporation. Charitable, or public-spirited individuals, desirous of making permanent appropriations for charitable or other useful purposes, find it impossible to effect their design securely, and certainly, without an incorporating Act. They apply to the government, state their beneficent object, and offer to advance the money necessary for its accomplishment, provided the government will confer on the instrument which is to execute their designs the capacity to execute them. The proposition is considered and approved. The benefit to the public is considered as an ample compensation for the faculty it confers, and the corporation is created. If the advantages to the public constitute a full compensation for the faculty it gives, there can be no reason for exacting a further compensation, by claiming a right to exercise over this artificial being a

power which changes its nature, and touches the fund, for the security and application of which it was created. There can be no reason for implying in a charter, given for a valuable consideration, a power which is not only not expressed, but is in direct contradiction to its express stipulations.

From the fact, then, that a charter of incorporation has been granted, nothing can be inferred which changes the character of the institution, or transfers to the government any new power over it. The character of civil institutions does not grow out of their incorporation, but out of the manner in which they are formed, and the objects for which they are created. The right to change them is not founded on their being incorporated, but on their being the instruments of government, created for its purposes. The same institutions, created for the same objects, though not incorporated, would be public institutions, and, of course, be controllable by the legislature. The incorporating Act neither gives nor prevents this control. Neither, in reason, can the incorporating Act change the character of a private eleemosynary institution. . . .

From this review of the charter, it appears that Dartmouth College is an eleemosynary institution, incorporated for the purpose of perpetuating the application of the bounty of the donors to the specified objects of that bounty; that its trustees or governors were originally named by the founder, and invested with the power of perpetuating themselves; that they are not public officers, nor is it a civil institution, participating in the administration of government; but a charity school, or a seminary of education, incorporated for the preservation of its property, and the perpetual application of that property to the objects of its creation.

Yet a question remains to be considered, of more real difficulty, on which more doubt has been entertained than on all that have been discussed. The trustees alone complain, and the trustees have no beneficial interest to be protected. Can this be such



a contract, as the constitution intended to withdraw from the power of State legislation? Contracts, the parties to which have a vested beneficial interest, and those only, it has been said, are the objects about which the constitution is solicitous, and to which its protection is extended.

The Court has bestowed on this argument the most deliberate consideration, and the result will be stated. Dr Whedlock, acting for himself, and for those who, at his solicitation, had made contributions to his school, applied for this charter, as the instrument which should enable him, and them, to perpetuate their beneficent intention. It was granted. An artificial, immortal being was created by the crown, capable of receiving and distributing forever, according to the will of the donors, the donations which should be made to it. On this being, the contributions which had been collected were immediately bestowed. These gifts were made, not indeed to make a profit for the donors, or their posterity, but for something in their opinion of inestimable value; for something which they deemed a full equivalent for the money with which it was purchased. The consideration for which they stipulated is the perpetual application of the fund to its object, in the mode prescribed by themselves. Their descendants may take no interest in the preservation of this consideration. But in this respect their descendants are not their representatives. They are represented by the corporation. The corporation is the assignee of their rights, stands in their place, and distributes their bounty, as they would themselves have distributed it, had they been immortal. So with respect to the students who are to derive learning from this source. The corporation is a trustee for them also. Their potential rights, which, taken distributively, are imperceptible, amount collectively to a most important interest. These are, in the aggregate, to be exercised, asserted, and protected by the corporation. They were as completely out of the donors, at the instant of their being vested in the corporation, and

as incapable of being asserted by the students, as at present.

According to the theory of the British constitution, their Parliament is omnipotent. To annul corporate rights might give a shock to public opinion, which that government has chosen to avoid; but its power is not questioned. Had Parliament, immediately after the emanation of this charter, and the execution of those conveyances which followed it, annulled the instrument, so that the living donors would have witnessed the disappointment of their hopes, the perfidy of the transaction would have been universally acknowledged. Yet then, as now, the donors would have had no interest in the property; then, as now, those who might be students would have had no rights to be violated; then, as now, it might be said that the trustees, in whom the rights of all were combined, possessed no private, individual, beneficial interest in the property confided to their protection. Yet the contract would at that time have been deemed sacred by all. What has since occurred to strip it of its inviolability? Circumstances have not changed it. In reason, in justice, and in law, it is now what it was in 1769.

This is plainly a contract to which the donors, the trustees, and the crown (to whose rights and obligations New Hampshire succeeds) were the original parties. It is a contract made on a valuable consideration. It is a contract for the security and disposition of property. It is a contract on the faith of which real and personal estate has been conveyed to the corporation. It is then a contract within the letter of the constitution, and within its spirit also, unless the fact that the property is invested by the donors in trustees for the promotion of religion and education, for the benefit of persons who are perpetually changing, though the objects remain the same, shall create a particular exception, taking this case out of the prohibition contained in the constitution.

It is more than possible that the preservation of rights of this description was not particularly in the view of the framers of the constitution when the clause under

consideration was introduced into that instrument. It is probable that interferences of more frequent recurrence, to which the temptation was stronger and of which the mischief was more extensive, constituted the great motive for imposing this restriction on the State legislatures. But although a particular and a rare case may not in itself be of sufficient magnitude to induce a rule, yet it must be governed by the rule, when established, unless some plain and strong reason for excluding it can be given. It is not enough to say that this particular case was not in the mind of the convention when the article was framed, nor of the American people when it was adopted. It is necessary to go farther, and to say that, had this particular case been suggested, the language would have been so varied as to exclude it, or it would have been made a special exception. The case, being within the words of the rule, must be within its operation likewise, unless there be something in the literal construction so obviously absurd, or mischievous, or repugnant to the general spirit of the instrument as to justify those who expound the constitution in making it an exception.

On what safe and intelligible ground can this exception stand? There is no expression in the constitution, no sentiment delivered by its contemporaneous expounders, which would justify us in making it. . . .

In the absence of all authority of this kind, is there, in the nature and reason of the case itself, that which would sustain a construction of the constitution, not warranted by its words? Are contracts of this description of a character to excite so little interest, that we must exclude them from the provisions of the constitution, as being unworthy of the attention of those who framed the instrument? Or does public policy so imperiously demand their remaining exposed to legislative alteration as to compel us, or rather to permit us, to say, that these words, which were introduced to give stability to contracts, and which in their plain import comprehend this contract, must yet be so construed, as to exclude it?

Almost all eleemosynary corporations, those which are created for the promotion of religion, of charity, or of education, are of the same character. The law of this case is the law of all. . . .

If the insignificance of the object does not require that we should exclude contracts respecting it from the protection of the constitution; neither, as we conceive, is the policy of leaving them subject to legislative alteration so apparent, as to require a forced construction of that instrument in order to effect it. These eleemosynary institutions do not fill the place, which would otherwise be occupied by government, but that which would otherwise remain vacant. They are complete acquisitions to literature. They are donations to education; donations, which any government must be disposed rather to encourage than to discountenance. It requires no very critical examination of the human mind to enable us to determine, that one great inducement to these gifts is the conviction felt by the giver, that the disposition he makes of them is immutable. It is probable, that no man ever was, and that no man ever will be, the founder of a college, believing at the time, that an Act of incorporation constitutes no security for the institution; believing, that it is immediately to be deemed a public institution, whose funds are to be governed and applied, not by the will of the donor, but by the will of the legislature. All such gifts are made in the pleasing, perhaps delusive, hope, that the charity will flow forever in the channel which the givers have marked out for it. If every man finds in his own bosom strong evidence of the universality of this sentiment, there can be but little reason to imagine, that the framers of our constitution were strangers to it, and that, feeling the necessity and policy of giving permanence and security to contracts, of withdrawing them from the influence of legislative bodies, whose fluctuating policy, and repeated interferences, produced the most perplexing and injurious embarrassments, they still deemed it necessary to leave these contracts subject to those interferences. The

motives for such an exception must be very powerful, to justify the construction which makes it.

The opinion of the court, after mature deliberation, is, that this is a contract, the obligation of which cannot be impaired without violating the constitution of the United States. This opinion appears to us to be equally supported by reason and by the former decisions of this court.

2. We next proceed to the inquiry whether its obligation has been impaired by those acts of the legislature of New Hampshire to which the special verdict refers. . . .

On the effect of this law two opinions cannot be entertained. Between acting directly and acting through the agency of trustees and overseers no essential difference is perceived. The whole power of governing the college is transformed from trustees appointed according to the will of the founder, expressed in the charter, to the executive of New Hampshire. The management and application of the funds of this eleemosynary institution, which are placed by the donors in the hands of trustees named in the charter, and empowered to perpetuate themselves, are placed by this Act under the control of the government of the State. The will of the State is substituted for the will of the donors in every essential operation of the college. This is not an immaterial change. The founders of the college contracted, not merely for the perpetual application of the funds which they gave, to the objects for which those funds were given; they contracted also, to secure that application by the constitution of the corporation. They contracted for a system which should, as far as human foresight can provide, retain forever the government of the literary institution they had formed, in the hands of persons approved by themselves. This system is totally changed. The charter of 1769 exists no longer. It is reorganized; and reorganized in such a manner as to convert a literary institution, molded according to the will of its founders and placed under the control of private literary men,

into a machine entirely subservient to the will of government. This may be for the advantage of this college in particular, and may be for the advantage of literature in general; but it is not according to the will of the donors, and is subversive of that contract on the faith of which their property was given. . . .

It results from this opinion, that the acts of the legislature of New Hampshire, which are stated in the special verdict found in this cause, are repugnant to the constitution of the United States; and that the judgment on this special verdict ought to have been for the plaintiffs. The judgment of the State court must, therefore, be reversed.

#### 4. THE MISSOURI COMPROMISE, 1820

[The invention of the cotton-gin by Eli Whitney in 1794 made cotton-growing an extremely profitable enterprise, and negro slavery the basis of the economy of the Southern States. The area in which cotton might be grown extended to the land to the west of the original thirteen States and, as the Louisiana territory was exploited for the purpose, large estates with slave labour were founded there.

Since 1804 the American States and Territories, including the land acquired by the Louisiana Purchase, had been divided between slave-holding and free units by the line of latitude  $36^{\circ} 30'$  and the Delaware river. This was known as the Mason and Dixon's line, from two English surveyors who had traced the boundaries between Maryland and Pennsylvania in 1763. It had become an established convention that an even balance should be maintained in the Senate between Slave and Free States, as new States were admitted to the Union, and in 1819 there were eleven of each. In that year the people living on the west bank of the Mississippi near St Louis applied to Congress for admission as a State of the Union, and immediately the first great crisis in the history of American slavery developed. Missouri, although it lay almost entirely north of the Mason and Dixon's line, had drawn up a draft constitution which permitted slavery, but when the Bill came before the House of Representatives a member from New York, James Tallmadge, proposed and

carried an amendment which would have ensured the gradual extinction of slavery in the new State. The Bill was then defeated in the Senate. A violent political controversy broke out, and there were threats of secession in the South. Eventually the Missouri Enabling Act was passed, in March 1820, which enshrined a compromise. Missouri was admitted as a Slave State, but slavery was prohibited in the territory of the Union north of the line of latitude  $36^{\circ} 30'$ .

The compromise settled the issue for over twenty years, but Thomas Jefferson, now eighty years old, saw with prophetic insight the dangers disclosed. 'This momentous question,' he wrote, 'like a fire bell in the night, awakened and filled me with terror. I considered it at once as the knell of the Union.']

(a) THE TALLMADGE AMENDMENT

13 FEBRUARY 1819

*And provided also, That the further introduction of slavery or involuntary servitude be prohibited, except for the punishment of crimes, whereof the party shall be duly convicted; and that all children of slaves, born within the said State, after the admission thereof into the Union, shall be free but may be held to service until the age of twenty-five years.*

(b) MISSOURI ENABLING ACT

6 MARCH 1820

*An Act to authorize the people of the Missouri territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and to prohibit slavery in certain territories.*

*Be it enacted, That the inhabitants of that portion of the Missouri territory included within the boundaries hereinafter designated, be, and they are hereby, authorized to form for themselves a constitution and State government, and to assume such name as they shall deem proper; and the said State, when formed,*

shall be admitted into the Union, upon an equal footing with the original States, in all respects whatsoever.

SEC. 2. That the said State shall consist of all the territory included within the following boundaries, to wit: Beginning in the middle of the Mississippi river, on the parallel of thirty-six degrees of north latitude; thence west, along that parallel of latitude, to the St François river; thence up, and following the course of that river, in the middle of the main channel thereof, to the parallel of latitude of thirty-six degrees and thirty minutes; thence west, along the same, to a point where the said parallel is intersected by a meridian line passing through the middle of the mouth of the Kansas river, where the same empties into the Missouri river, thence, from the point aforesaid north, along the said meridian line, to the intersection of the parallel of latitude which passes through the rapids of the river Des Moines, making the said line to correspond with the Indian boundary line; thence east, from the point of intersection last aforesaid, along the said parallel of latitude, to the middle of the channel of the main fork of the said river Des Moines; thence down and along the middle of the main channel of the said river Des Moines, to the mouth of the same, where it empties into the Mississippi river; thence, due east, to the middle of the main channel of the Mississippi river; thence down, and following the course of the Mississippi river, in the middle of the main channel thereof, to the place of beginning. . . .

SEC. 8. That in all that territory ceded by France to the United States, under the name of Louisiana, which lies north of thirty-six degrees and thirty minutes north latitude, not included within the limits of the State contemplated by this Act, slavery and involuntary servitude, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted, shall be, and is hereby, forever prohibited: *Provided always*, That any person escaping into the same, from whom labour or service is lawfully claimed, in any State or territory of the United States, such fugitive



may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid.

## 5. COHENS *v.* VIRGINIA, 1821

[The City of Washington under an Act of Congress was empowered to authorize lotteries for effecting improvements in the city. The legislature of Virginia forbade the purchase or sale of lottery tickets within the State except of those lotteries authorized by the laws of the State. P. J. and M. J. Cohens were sued and convicted in Virginia for selling lottery tickets authorized by the City of Washington. The case came before the Supreme Court on a writ of error.

Marshall, when stating the right of the Supreme Court to review the judgments of a State Court, took the opportunity to proclaim more emphatically than on any other occasion his view of the essential relations between the Government of the United States and the States themselves, as established by the Constitution.]

MARSHALL, C.J. The defendant in error moves to dismiss this writ, for want of jurisdiction.

In support of this motion, three points have been made, and argued with the ability which the importance of the question merits. These points are—

1st. That a State is a defendant.

2nd. That no writ of error lies from this Court to a State Court.

3rd. The third point has been presented in different forms by the gentlemen who have argued it. The counsel who opened the cause said, that the want of jurisdiction was shown by the subject matter of the case. The counsel who followed him said, that jurisdiction was not given by the judiciary Act. The Court has bestowed all its attention on the arguments of both gentlemen, and supposes that their tendency is to show that this Court has no jurisdiction of the case, or, in other words, has no right to review the judgment of the State Court, because neither the constitution nor any

law of the United States has been violated by that judgment.

The questions presented to the Court by the two first points made at the bar are of great magnitude, and may be truly said vitally to affect the Union. They exclude the inquiry whether the constitution and laws of the United States have been violated by the judgment which the plaintiffs in error seek to review; and maintain that, admitting such violation, it is not in the power of the government to apply a corrective. They maintain that the nation does not possess a department capable of restraining peaceably, and by authority of law, any attempts which may be made, by a part, against the legitimate powers of the whole; and that the government is reduced to the alternative of submitting to such attempts, or of resisting them by force. They maintain that the constitution of the United States has provided no tribunal for the final construction of itself, or of the laws or treaties of the nation; but that this power may be exercised in the last resort by the Courts of every State in the Union. That the constitution, laws, and treaties may receive as many constructions as there are States; and that this is not a mischief, or, if a mischief, is irremediable. These abstract propositions are to be determined; for he who demands decision without permitting inquiry affirms that the decision he asks does not depend on inquiry.

If such be the constitution, it is the duty of the Court to bow with respectful submission to its provisions. If such be not the constitution, it is equally the duty of this Court to say so; and to perform that task which the American people have assigned to the judicial department.

1st. The first question to be considered is, whether the jurisdiction of this Court is excluded by the character of the parties, one of them being a State, and the other a citizen of that State. . . .

The jurisdiction of the Court, then, being extended by the letter of the constitution to all cases arising under

it or under the laws of the United States, it follows that those who would withdraw any case of this description from that jurisdiction must sustain the exemption they claim on the spirit and true meaning of the constitution, which spirit and true meaning must be so apparent as to overrule the words which its framers have employed.

The counsel for the defendant in error have undertaken to do this; and have laid down the general proposition, that a sovereign independent State is not suable, except by its own consent.

This general proposition will not be controverted. But its consent is not requisite in each particular case. It may be given in a general law. And if a State has surrendered any portion of its sovereignty, the question, whether a liability to suit be a part of this portion, depends on the instrument by which the surrender is made. If, upon a just construction of that instrument, it shall appear that the State has submitted to be sued, then it has parted with this sovereign right of judging in every case on the justice of its own pretensions, and has intrusted that power to a tribunal in whose impartiality it confides.

The American States, as well as the American people, have believed a close and firm union to be essential to their liberty and to their happiness. They have been taught by experience that this union cannot exist without a government for the whole; and they have been taught by the same experience that this government would be a mere shadow, that must disappoint all their hopes, unless invested with large portions of that sovereignty which belongs to independent States. Under the influence of this opinion, and thus instructed by experience, the American people, in the conventions of their respective States, adopted the present constitution.

If it could be doubted, whether, from its nature, it were not supreme in all cases where it is empowered to act, that doubt would be removed by the declaration, that 'this constitution, and the laws of the United States which shall be made in pursuance thereof, and all

treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding'. This is the authoritative language of the American people; and, if gentlemen please, of the American States. It marks, with lines too strong to be mistaken, the characteristic distinction between the government of the Union, and those of the States. The general government, though limited as to its objects, is supreme with respect to those objects. This principle is a part of the constitution; and if there be any who deny its necessity, none can deny its authority.

To this supreme government ample powers are confided; and if it were possible to doubt the great purposes for which they were so confided, the people of the United States have declared, that they are given 'in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to themselves and their posterity'. With the ample powers confided to this supreme government for these interesting purposes are connected many express and important limitations on the sovereignty of the States, which are made for the same purposes. The powers of the Union, on the great subjects of war, peace, and commerce, and on many others, are in themselves limitations of the sovereignty of the States; but in addition to these, the sovereignty of the States is surrendered in many instances where the surrender can only operate to the benefit of the people, and where, perhaps, no other power is conferred on Congress than a conservative power to maintain the principles established in the constitution. The maintenance of these principles in their purity is certainly among the great duties of the government. One of the instruments by which this duty may be peaceably performed is the judicial department. It is authorized to decide all cases, of every description, arising under

the constitution or laws of the United States. From this general grant of jurisdiction no exception is made of those cases in which a State may be a party. When we consider the situation of the government of the Union and of a State in relation to each other, the nature of our constitution, the subordination of the State governments to that constitution, the great purpose for which jurisdiction over all cases arising under the constitution and laws of the United States is confided to the judicial department, are we at liberty to insert in this general grant, an exception of those cases in which a State may be a party? Will the spirit of the constitution justify this attempt to control its words? We think it will not. We think a case arising under the constitution or laws of the United States is cognizable in the Courts of the Union, whoever may be the parties to that case.

Had any doubt existed with respect to the just construction of this part of the section, that doubt would have been removed by the enumeration of those cases to which the jurisdiction of the federal Courts is extended, in consequence of the character of the parties. In that enumeration, we find 'controversies between two or more States, between a State and citizens of another State, and between a State and foreign States, citizens, or subjects'.

One of the express objects, then, for which the judicial department was established, is the decision of controversies between States, and between a State and individuals. The mere circumstance, that a State is a party, gives jurisdiction to the Court. How, then, can it be contended, that the very same instrument, in the very same section, should be so construed, as that this same circumstance should withdraw a case from the jurisdiction of the court, where the constitution or laws of the United States are supposed to have been violated? . . . The mischievous consequences of the construction contended for on the part of Virginia are also entitled to great consideration. It would prostrate, it has been said, the government and its laws at the feet of every State in the Union. And would not this

be its effect? What power of the government could be executed by its own means, in any State disposed to resist its execution by a course of legislation? The laws must be executed by individuals acting within the several States. If these individuals may be exposed to penalties, and if the Courts of the Union cannot correct the judgments by which these penalties may be enforced, the course of the government may be, at any time, arrested by the will of one of its members. Each member will possess a  *veto* on the will of the whole.

The answer which has been given to this argument does not deny its truth, but insists that confidence is reposed, and may be safely reposed, in the State institutions; and that, if they shall ever become so insane or so wicked as to seek the destruction of the government, they may accomplish their object by refusing to perform the functions assigned to them.

We readily concur with the counsel for the defendant, in the declaration, that the cases which have been put, of direct legislative resistance for the purpose of opposing the acknowledged powers of the government, are extreme cases, and in the hope, that they will never occur; but we cannot help believing, that a general conviction of the total incapacity of the government to protect itself and its laws, in such cases, would contribute in no inconsiderable degree to their occurrence.

Let it be admitted, that the cases which have been put are extreme and improbable, yet there are gradations of opposition to the laws, far short of those cases, which might have a baneful influence on the affairs of the nation. Different States may entertain different opinions on the true construction of the constitutional powers of Congress.

We know that, at one time, the assumption of the debts contracted by the several States, during the war of our revolution, was deemed unconstitutional by some of them. We know, too, that at other times, certain taxes, imposed by Congress, have been pronounced unconstitutional. Other laws have been questioned partially, while they were supported by the great

majority of the American people. We have no assurance that we shall be less divided than we have been. States may legislate in conformity to their opinions, and may enforce those opinions by penalties. It would be hazarding too much to assert, that the judicatures of the States will be exempt from the prejudices by which the legislatures and people are influenced, and will constitute perfectly impartial tribunals. In many States the judges are dependent for office and for salary on the will of the legislature. The constitution of the United States furnishes no security against the universal adoption of this principle. When we observe the importance which that constitution attaches to the independence of judges, we are the less inclined to suppose that it can have intended to leave these constitutional questions to tribunals where this independence may not exist, in all cases where a State shall prosecute an individual who claims the protection of an Act of Congress. These prosecutions may take place even without a legislative Act. A person making a seizure under an Act of Congress may be indicted as a trespasser, if force has been employed, and of this a jury may judge. How extensive may be the mischief if the first decisions in such cases should be final!

These collisions may take place in times of no extraordinary commotion. But a constitution is framed for ages to come, and is designed to approach immortality as nearly as human institutions can approach it. Its course cannot always be tranquil. It is exposed to storms and tempests, and its framers must be unwise statesmen indeed, if they have not provided it, so far as its nature will permit, with the means of self-preservation from the perils it may be destined to encounter. No government ought to be so defective in its organization as not to contain within itself the means of securing the execution of its own laws against other dangers than those which occur every day. Courts of justice are the means most usually employed; and it is reasonable to expect that a government should repose on its own Courts, rather

than on others. There is certainly nothing in the circumstances under which our constitution was formed, nothing in the history of the times, which would justify the opinion that the confidence reposed in the States was so implicit as to leave in them and their tribunals the power of resisting or defacing, in the form of law, the legitimate measures of the Union. The requisitions of Congress, under the confederation, were as constitutionally obligatory as the laws enacted by the present Congress. That they were habitually disregarded, is a fact of universal notoriety. With the knowledge of this fact, and under its full pressure, a convention was assembled to change the system. Is it so improbable that they should confer on the judicial department the power of construing the constitution and laws of the Union in every case, in the last resort, and of preserving them from all violation from every quarter, so far as judicial decisions can preserve them, that this improbability should essentially affect the construction of the new system? We are told, and we are truly told, that the great change which is to give efficacy to the present system is its ability to act on individuals directly, instead of acting through the instrumentality of State governments. But, ought not this ability, in reason and sound policy, to be applied directly to the protection of individuals employed in the execution of the laws, as well as to their coercion? Your laws reach the individual without the aid of any other power; why may they not protect him from punishment for performing his duty in executing them? . . .

It is very true that, whenever hostility to the existing system shall become universal, it will be also irresistible. The people made the constitution, and the people can unmake it. It is the creature of their will, and lives only by their will. But this supreme and irresistible power to make or to unmake, resides only in the whole body of the people; not in any subdivision of them. The attempt of any of the parts to exercise it is usurpation, and ought to be repelled by those to



whom the people have delegated their power of repelling it.

The acknowledged inability of the government, then, to sustain itself against the public will, and, by force or otherwise, to control the whole nation, is no sound argument in support of its constitutional inability to preserve itself against a section of the nation acting in opposition to the general will.

It is true, that if all the States, or a majority of them, refuse to elect Senators, the legislative powers of the Union will be suspended. But if any one State shall refuse to elect them, the Senate will not, on that account, be the less capable of performing all its functions. The argument founded on this fact would seem rather to prove the subordination of the parts to the whole, than the complete independence of any one of them. The framers of the constitution were, indeed, unable to make any provisions which should protect that instrument against a general combination of the States, or of the people, for its destruction; and, conscious of this inability, they have not made the attempt. But they were able to provide against the operation of measures adopted in any one State, whose tendency might be to arrest the execution of the laws, and this it was the part of true wisdom to attempt. We think they have attempted it.

It has been also urged, as an additional objection to the jurisdiction of the Court, that cases between a State and one of its own citizens do not come within the general scope of the constitution; and were obviously never intended to be made cognizable in the federal Courts. The State tribunals might be suspected of partiality in cases between itself or its citizens and aliens, or the citizens of another State, but not in proceedings by a State against its own citizens. That jealousy which might exist in the first case could not exist in the last, and therefore the judicial power is not extended to the last.

This is very true, so far as jurisdiction depends on the character of the parties; and the argument would

have great force if urged to prove that this Court could not establish the demand of a citizen upon his State, but is not entitled to the same force when urged to prove that this Court cannot inquire whether the constitution or laws of the United States protect a citizen from a prosecution instituted against him by a State. If jurisdiction depended entirely on the character of the parties, and was not given where the parties have not an original right to come into Court, that part of the 2nd section of the 3rd article which extends the judicial power to all cases arising under the constitution and laws of the United States would be mere surplusage. It is to give jurisdiction where the character of the parties would not give it, that this very important part of the clause was inserted. It may be true, that the partiality of the State tribunals, in ordinary controversies between a State and its citizens, was not apprehended, and therefore the judicial power of the Union was not extended to such cases; but this was not the sole nor the greatest object for which this department was created. A more important, a much more interesting object, was the preservation of the constitution and laws of the United States, so far as they can be preserved by judicial authority; and therefore the jurisdiction of the Courts of the Union was expressly extended to all cases arising under that constitution and those laws. If the constitution or laws may be violated by proceedings instituted by a State against its own citizens, and if that violation may be such as essentially to affect the constitution and the laws, such as to arrest the progress of government in its constitutional course, why should these cases be excepted from that provision which expressly extends the judicial power of the Union to *all* cases arising under the constitution and laws?

After bestowing on this subject the most attentive consideration, the Court can perceive no reason founded on the character of the parties for introducing an exception which the constitution has not made; and we think that the judicial power, as originally given,

extends to all cases arising under the constitution or a law of the United States, whoever may be the parties.

It has also been contended, that this jurisdiction, if given, is original, and cannot be exercised in the appellate form. . . .

We think, then, that, as the constitution originally stood, the appellate jurisdiction of this Court, in all cases arising under the constitution, laws, or treaties of the United States, was not arrested by the circumstance that a State was a party.

This leads to the consideration of the 11th Amendment.

It is in these words: 'The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States, by citizens of another State, or by citizens or subjects of any foreign State.'

It is a part of our history, that, at the adoption of the constitution, all the States were greatly indebted; and the apprehension that these debts might be prosecuted in the federal Courts formed a very serious objection to that instrument. Suits were instituted; and the Court maintained its jurisdiction. The alarm was general; and, to quiet the apprehensions that were so extensively entertained, this amendment was proposed in Congress, and adopted by the State legislatures. That its motive was not to maintain the sovereignty of a State from the degradation supposed to attend a compulsory appearance before the tribunal of the nation, may be inferred from the terms of the amendment. It does not comprehend controversies between two or more States, or between a State and a foreign State. The jurisdiction of the Court still extends to these cases: and in these a State may still be sued. We must ascribe the amendment, then, to some other cause than the dignity of a State. There is no difficulty in finding this cause. Those who were inhibited from commencing a suit against a State, or from prosecuting one which might be commenced before the adoption of the amendment, were persons who might probably be its creditors. There was not

much reason to fear that foreign or sister States would be creditors to any considerable amount, and there was reason to retain the jurisdiction of the Court in those cases, because it might be essential to the preservation of peace. The amendment, therefore, extended to suits commenced or prosecuted by individuals, but not to those brought by States.

The first impression made on the mind by this amendment is, that it was intended for those cases, and for those only, in which some demand against a State is made by an individual in the Courts of the Union. If we consider the causes to which it is to be traced, we are conducted to the same conclusion. A general interest might well be felt in leaving to a State the full power of consulting its convenience in the adjustment of its debts, or of other claims upon it; but no interest could be felt in so changing the relations between the whole and its parts, as to strip the government of the means of protecting, by the instrumentality of its Courts, the constitution and laws from active violation. . . .

It is, then, the opinion of the Court, that the defendant who removes a judgment rendered against him by a State Court into this Court, for the purpose of re-examining the question, whether that judgment be in violation of the constitution or laws of the United States, does not commence or prosecute a suit against the State, whatever may be its opinion where the effect of the writ may be to restore the party to the possession of a thing which he demands.

But should we in this be mistaken the error does not affect the case now before the Court. If this writ of error be a suit in the sense of the 11th Amendment, it is not a suit commenced or prosecuted 'by a citizen of another State or by a citizen or subject of any foreign State'. It is not then within the amendment, but is governed by the constitution as originally framed, and we have already seen, that in its origin, the judicial power was extended to all cases arising under the constitution or laws of the United States, without respect to parties.

2nd. The second objection to the jurisdiction of the Court is that its appellate power cannot be exercised, in any case, over the judgment of a State Court. . . .

That the United States form, for many and for most important purposes, a single nation, has not yet been denied. In war we are one people. In making peace we are one people. In all commercial regulations we are one and the same people. In many other respects the American people are one, and the government which is alone capable of controlling and managing their interests, in all these respects, is the government of the Union. It is their government, and in that character they have no other. America has chosen to be, in many respects, and to many purposes, a nation; and for all these purposes her government is complete; to all these objects it is competent. The people have declared that in the exercise of all the powers given for these objects it is supreme. It can, then, in effecting these objects, legitimately control all individuals or governments within the American territory. The constitution and laws of a State, so far as they are repugnant to the constitution and laws of the United States, are absolutely void. These States are constituent parts of the United States. They are members of one great empire—for some purposes sovereign, for some purposes subordinate.

In a government so constituted is it unreasonable that the judicial power should be competent to give efficacy to the constitutional laws of the legislature? That department can decide on the validity of the constitution or law of a State, if it be repugnant to the constitution or to a law of the United States. Is it unreasonable that it should also be empowered to decide on the judgment of a State tribunal enforcing such unconstitutional law? Is it so very unreasonable as to furnish a justification for controlling the words of the constitution? We think it is not. We think that, in a government acknowledgedly supreme with respect to objects of vital interest to the nation, there is nothing inconsistent with sound reason, nothing incompatible

with the nature of government, in making all its departments supreme, so far as respects those objects, and so far as is necessary to their attainment. The exercise of the appellate power over those judgments of the State tribunals which may contravene the constitution or laws of the United States, is, we believe, essential to the attainment of those objects.

The propriety of intrusting the construction of the constitution, and laws made in pursuance thereof, to the judiciary of the Union, has not, we believe, as yet been drawn in question. It seems to be a corollary from this political axiom that the federal Courts should either possess exclusive jurisdiction in such cases, or a power to revise the judgment rendered in them by State tribunals. . . .

3rd. We come now to the third objection, which, though differently stated by the counsel, is substantially the same. One gentleman has said that the judiciary Act does not give jurisdiction in the case. . . .

The solution, and the only solution of the difficulty, is, that the power vested in Congress, as the legislature of the United States, to legislate exclusively within any place ceded by a State, carries with it, as an incident, the right to make that power effectual. If a felon escape out of the State in which the act has been committed, the government cannot pursue him into another State, and apprehend him there, but must demand him from the executive power of that other State. If Congress were to be considered merely as the local legislature for the fort or other place in which the offence might be committed, then this principle would apply to them as to other local legislatures, and the felon who should escape out of the fort, or other place, in which the felony may have been committed, could not be apprehended by the marshal, but must be demanded from the executive of the State. But we know that the principle does not apply; and the reason is, that Congress is not a local legislature, but exercises this particular power, like all its other powers, in its high character, as the legislature of the Union. The

American people thought it a necessary power, and they conferred it for their own benefit. Being so conferred, it carries with it all those incidental powers which are necessary to its complete and effectual execution. . . .

The whole merits of this case, then, consist in the construction of the constitution and the Act of Congress. The jurisdiction of the Court, if acknowledged, goes no farther. This we are required to do without the exercise of jurisdiction.

The counsel for the State of Virginia have, in support of this motion, urged many arguments of great weight against the application of the Act of Congress to such a case as this; but those arguments go to the construction of the constitution, or of the law, or of both; and seem, therefore, rather calculated to sustain their cause upon its merits, than to prove a failure of jurisdiction in the Court.

After having bestowed upon this question the most deliberate consideration of which we are capable, the Court is unanimously of opinion that the objections to its jurisdiction are not sustained, and that the motion ought to be overruled.

Motion denied.

## 6. THE MONROE DOCTRINE, 1823

[In 1812 the great revolution began in Spanish America as a direct result of Napoleon's conquest of Spain. The United States naturally supported the colonies in their struggle for independence, while Great Britain strove for a reconciliation, but both were agreed in insisting that the question must be settled without the intervention of other European Powers. In 1823 France invaded Spain to restore the royal supremacy in that country, and a combined Franco-Spanish expedition to South America was contemplated. The United States had already, in 1822, recognized the independence of La Plata (later the Argentine Republic), Chile, Peru, Colombia, and Mexico, but the British Govern-

ment was not ready to follow suit. Canning, the British Foreign Secretary, proposed, however, a joint Anglo-American declaration which would exclude the French from the South American colonies.

Actually the existence of the British fleet was in itself enough to cause the French to disclaim any intention of interfering in America, and nothing came of the joint declaration. In the United States, however, feeling ran high against the despotic Powers in Europe, banded together in the Holy Alliance. President Monroe contemplated a declaration, not only warning them off the American continent, but also recognizing the independence of Greece. However John Quincy Adams, the Secretary of State, persuaded him to abandon any such definite expressions of interest in the affairs of Europe. On 2 December 1823 President Monroe wrote his annual Message to Congress in the course of which he summarized the attitude of the United States towards Europe and towards European relations with the New World.

The Monroe Doctrine, as it came to be called, and Washington's Farewell Address are the two most important statements of American foreign policy. In later years it was to receive important additions and qualifications, as in President Polk's Message of 1845, applying the doctrine to Texas, Oregon, and California, in Richard Olney's note of 1895, claiming that the United States was practically sovereign in the American continent, in President Theodore Roosevelt's Message of 1904, stating that the Doctrine might force the United States to exercise an international police power, and in President Franklin Roosevelt's Dayton speech of 12 October 1940, extending its application to 'peaceful trade in the Pacific and Atlantic Oceans'. In the Covenant of the League of Nations the Monroe Doctrine was referred to as a 'regional understanding' 'for securing the maintenance of peace'. This can hardly be accepted as a very accurate description, but an account of the varying interpretations of President Monroe's message would describe much of the history of the foreign policy of the United States.]

. . . At the proposal of the Russian Imperial Government, made through the minister of the Emperor residing here, a full power and instructions have been transmitted to the minister of the United States at



St Petersburg to arrange by amicable negotiation the respective rights and interests of the two nations on the northwest coast of this continent. A similar proposal had been made by His Imperial Majesty to the Government of Great Britain, which has likewise been acceded to. The Government of the United States has been desirous by this friendly proceeding of manifesting the great value which they have invariably attached to the friendship of the Emperor and their solicitude to cultivate the best understanding with his Government. In the discussions to which this interest has given rise and in the arrangements by which they may terminate the occasion has been judged proper for asserting, as a principle in which the rights and interests of the United States are involved, that the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers. . . .

A strong hope has been long entertained, founded on the heroic struggle of the Greeks, that they would succeed in their contest and resume their equal station among the nations of the earth. It is believed that the whole civilized world take a deep interest in their welfare. Although no power has declared in their favor, yet none, according to our information, has taken part against them. Their cause and their name have protected them from dangers which might ere this have overwhelmed any other people. The ordinary calculations of interest and of acquisition with a view to aggrandizement, which mingles so much in the transactions of nations, seem to have had no effect in regard to them. From the facts which have come to our knowledge there is good cause to believe that their enemy has lost forever all dominion over them; that Greece will become again an independent nation. That she may obtain that rank is the object of our most ardent wishes.

It was stated at the commencement of the last session that a great effort was then making in Spain and

Portugal to improve the condition of the people of those countries, and that it appeared to be conducted with extraordinary moderation. It need scarcely be remarked that the result has been so far very different from what was then anticipated. Of events in that quarter of the globe, with which we have so much intercourse and from which we derive our origin, we have always been anxious and interested spectators. The citizens of the United States cherish sentiments the most friendly in favor of the liberty and happiness of their fellow-men on that side of the Atlantic. In the wars of the European powers in matters relating to themselves we have never taken any part, nor does it comport with our policy so to do. It is only when our rights are invaded or seriously menaced that we resent injuries or make preparation for our defense. With the movements in this hemisphere we are of necessity more immediately connected, and by causes which must be obvious to all enlightened and impartial observers. The political system of the allied powers is essentially different in this respect from that of America. This difference proceeds from that which exists in their respective Governments; and to the defense of our own, which has been achieved by the loss of so much blood and treasure, and matured by the wisdom of their most enlightened citizens, and under which we have enjoyed unexampled felicity, this whole nation is devoted. We owe it, therefore, to candor and to the amicable relations existing between the United States and those powers to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power we have not interfered and shall not interfere. But with the Governments who have declared their independence and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any

other manner their destiny, by any European power in any other light than as the manifestation of an unfriendly disposition toward the United States. In the war between those new Governments and Spain we declared our neutrality at the time of their recognition, and to this we have adhered, and shall continue to adhere, provided no change shall occur which, in the judgment of the competent authorities of this Government, shall make a corresponding change on the part of the United States indispensable to their security.

The late events in Spain and Portugal shew that Europe is still unsettled. Of this important fact no stronger proof can be adduced than that the allied powers should have thought it proper, on any principle satisfactory to themselves, to have interposed by force in the internal concerns of Spain. To what extent such interposition may be carried, on the same principle, is a question in which all independent powers whose governments differ from theirs are interested, even those most remote, and surely none more so than the United States. Our policy in regard to Europe, which was adopted at an early stage of the wars which have so long agitated that quarter of the globe, nevertheless remains the same, which is, not to interfere in the internal concerns of any of its powers; to consider the government *de facto* as the legitimate government for us; to cultivate friendly relations with it, and to preserve those relations by a frank, firm, and manly policy, meeting in all instances the just claims of every power, submitting to injuries from none. But in regard to those continents circumstances are eminently and conspicuously different. It is impossible that the allied powers should extend their political system to any portion of either continent without endangering our peace and happiness; nor can anyone believe that our southern brethren, if left to themselves, would adopt it of their own accord. It is equally impossible, therefore, that we should behold such interposition in any form with indifference. If we look to the comparative strength and resources of Spain and those new

Governments, and their distance from each other, it must be obvious that she can never subdue them. It is still the true policy of the United States to leave the parties to themselves, in the hope that other powers will pursue the same course. . . .

## 7. GIBBONS *v.* OGDEN, 1824

[The main point at issue in this complicated case was the question whether the Steamboat monopoly laws of the State of New York violated Article I, Section 8, of the Constitution which bestowed on Congress 'the power to regulate commerce among several States'. Marshall's judgment, which annulled the State monopoly, made possible the vast extension of interstate commerce and communications during the nineteenth century. It was a logical development of the principles he had annunciated in earlier cases, which made Congress, within the limits laid down by the Constitution, supreme over the States, and, in fact, of the original Annapolis Resolutions, which had called the Philadelphia Convention into being to remedy the inability of the National Government to protect the commerce of the nation in face of the powers held by the separate States.]

MARSHALL, C.J. The appellants contend that this decree is erroneous because the laws which purport to give the exclusive privilege it sustains are repugnant to the constitution and laws of the United States. They are said to be repugnant—1st To that clause in the constitution which authorizes Congress to regulate commerce. 2nd To that which authorizes Congress to promote the progress of science and useful arts. . . .

As preliminary to the very able discussions of the constitution which we have heard from the bar, and as having some influence on its construction, reference has been made to the political situation of these States, anterior to its formation. It has been said that they were sovereign, were completely independent, and were connected with each other only by a league. This is true. But, when these allied sovereigns converted

their league into a government, when they converted their congress of ambassadors, deputed to deliberate on their common concerns, and to recommend measures of genéral utility, into a legislature, empowered to enact laws on the most interesting subjects, the whole character in which the States appear underwent a change, the extent of which must be determined by a fair consideration of the instrument by which that change was effected.

This instrument contains an enumeration of powers expressly granted by the people to their government. It has been said that these powers ought to be construed strictly. But why ought they to be so construed? Is there one sentence in the constitution which gives countenance to this rule? In the last of the enumerated powers, that which grants, expressly, the means for carrying all others into execution, Congress is authorized 'to make all laws which shall be necessary and proper' for the purpose. But this limitation on the means which may be used is not extended to the powers which are conferred; nor is there one sentence in the constitution, which has been pointed out by the gentlemen of the bar, or which we have been able to discern, that prescribes this rule. We do not, therefore, think ourselves justified in adopting it. What do gentlemen mean by a strict construction? If they contend only against that enlarged construction which would extend words beyond their natural and obvious import, we might question the application of the term, but should not controvert the principle. If they contend for that narrow construction which, in support of some theory not to be found in the constitution, would deny to the government those powers which the words of the grant, as usually understood, import, and which are consistent with the general views and objects of the instrument; for that narrow construction, which would cripple the government, and render it unequal to the objects for which it is declared to be instituted, and to which the powers given, as fairly understood, render it competent; then we cannot perceive the

propriety of this strict construction, nor adopt it as the rule by which the constitution is to be expounded. As men whose intentions require no concealment generally employ the words which most directly and aptly express the ideas they intend to convey, the enlightened patriots who framed our constitution, and the people who adopted it, must be understood to have employed words in their natural sense, and to have intended what they have said.

The words are: 'Congress shall have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes.' The subject to be regulated is commerce; and our constitution being, as was aptly said at the bar, one of enumeration, and not of definition, to ascertain the extent of the power, it becomes necessary to settle the meaning of the word. The counsel for the appellee would limit it to traffic, to buying and selling, or the interchange of commodities, and do not admit that it comprehends navigation. This would restrict a general term, applicable to many objects, to one of its significations. Commerce, undoubtedly, is traffic, but it is something more—it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse. The mind can scarcely conceive a system for regulating commerce between nations which shall exclude all laws concerning navigation, which shall be silent on the admission of the vessels of the one nation into the ports of the other, and be confined to prescribing rules for the conduct of individuals, in the actual employment of buying and selling, or of barter. If commerce does not include navigation, the government of the Union has no direct power over that subject, and can make no law prescribing what shall constitute American vessels, or requiring that they shall be navigated by American seamen. Yet this power has been exercised from the commencement of the government, has been exercised with the consent of all, and has been understood by all to be a

commercial regulation. All America understands, and has uniformly understood, the word 'commerce' to comprehend navigation. It was so understood, and must have been so understood, when the constitution was framed. The power over commerce, including navigation, was one of the primary objects for which the people of America adopted their government, and must have been contemplated in forming it. The convention must have used the word in that sense, because all have understood it in that sense; and the attempt to restrict it comes too late. . . .

The word used in the constitution, then, comprehends, and has been always understood to comprehend, navigation within its meaning; and a power to regulate navigation is as expressly granted as if that term had been added to the word 'commerce'. To what commerce does this power extend? The constitution informs us, to commerce 'with foreign nations, and among the several States, and with the Indian tribes'. It has, we believe, been universally admitted that these words comprehend every species of commercial intercourse between the United States and foreign nations. No sort of trade can be carried on between this country and any other to which this power does not extend. It has been truly said that commerce, as the word is used in the constitution, is a unit, every part of which is indicated by the term.

If this be the admitted meaning of the word, in its application to foreign nations, it must carry the same meaning throughout the sentence, and remain a unit, unless there be some plain intelligible cause which alters it. The subject to which the power is next applied is to commerce 'among the several States'. The word 'among' means intermingled with. A thing which is among others is intermingled with them. Commerce among the States cannot stop at the external boundary-line of each State, but may be introduced into the interior. It is not intended to say that these words comprehend that commerce which is completely internal, which is carried on between man and man in a State,

or between different parts of the same State, and which does not extend to or affect other States. Such a power would be inconvenient and is certainly unnecessary. Comprehensive as the word 'among' is, it may very properly be restricted to that commerce which concerns more States than one. The phrase is not one which would probably have been selected to indicate the completely interior traffic of a State, because it is not an apt phrase for that purpose; and the enumeration of the particular classes of commerce to which the power was to be extended would not have been made had the intention been to extend the power to every description. The enumeration presupposes something not enumerated; and that something, if we regard the language or the subject of the sentence, must be the exclusively internal commerce of a State. The genius and character of the whole government seem to be, that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere for the purpose of executing some of the general powers of the government. The completely internal commerce of a State then, may be considered as reserved for the State itself.

But, in regulating commerce with foreign nations, the power of congress does not stop at the jurisdictional lines of the several States. It would be a very useless power if it could not pass those lines. The commerce of the United States with foreign nations is that of the whole United States. Every district has a right to participate in it. The deep streams which penetrate our country in every direction pass through the interior of almost every State in the Union, and furnish the means of exercising this right. If congress has the power to regulate it, that power must be exercised whenever the subject exists. If it exists within the States, if a foreign voyage may commence or terminate



at a port within a State, then the power of congress may be exercised within a State.

This principle is, if possible, still more clear when applied to commerce 'among the several States'. They either join each other, in which case they are separated by a mathematical line, or they are remote from each other, in which case other States lie between them. What is commerce 'among' them; and how is it to be conducted? Can a trading expedition between two adjoining States commence and terminate outside of each? And if the trading intercourse be between two States remote from each other, must it not commence in one, terminate in the other, and probably pass through a third? Commerce among the States must, of necessity, be commerce with the States. In the regulation of trade with the Indian tribes, the action of the law, especially when the constitution was made, was chiefly within a State.

The power of congress, then, whatever it may be, must be exercised within the territorial jurisdiction of the several States. The sense of the nation on this subject is unequivocally manifested by the provisions made in the laws for transporting goods by land between Baltimore and Providence, between New York and Philadelphia, and between Philadelphia and Baltimore.

We are now arrived at the inquiry, What is this power? It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the constitution. These are expressed in plain terms, and do not affect the questions which arise in this case, or which have been discussed at the bar. If, as has always been understood, the sovereignty of congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations, and among the several States, is vested in congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise

of the power as are found in the constitution of the United States. . . . The power of congress, then, comprehends navigation within the limits of every State in the Union, so far as that navigation may be, in any manner, connected with 'commerce with foreign nations, or among the several States, or with the Indian tribes'. It may, of consequence, pass the jurisdiction line of New York, and act upon the very waters to which the prohibition now under consideration applies.

But it has been urged with great earnestness that, although the power of congress to regulate commerce with foreign nations, and among the several States, be coextensive with the subject itself, and have no other limits than are prescribed in the constitution, yet the States may severally exercise the same power within their respective jurisdictions. In support of this argument, it is said that they possessed it as an inseparable attribute of sovereignty before the formation of the constitution, and still retain it, except so far as they have surrendered it by that instrument; that this principle results from the nature of the government, and is secured by the tenth amendment; that an affirmative grant of power is not exclusive, unless in its own nature it be such that the continued exercise of it by the former possessor is inconsistent with the grant, and that this is not of that description. . . .

These acts were cited at the bar for the purpose of showing an opinion in congress, that the States possess, concurrently with the legislature of the Union, the power to regulate commerce with foreign nations and among the States. Upon reviewing them, we think, they do not establish the proposition they were intended to prove. They show the opinion that the States retain powers enabling them to pass the laws to which allusion has been made, not that those laws proceed from the particular power which has been delegated to congress.

It has been contended by the counsel for the appellant that, as the word 'to regulate' implies in its nature full power over the thing to be regulated, it excludes, necessarily, the action of all others that would perform

the same operation on the same thing. That regulation is designed for the entire result, applying to those parts which remain as they were, as well as to those which are altered. It produces a uniform whole, which is as much disturbed and deranged by changing what the regulating power designs to leave untouched as that on which it has operated. There is great force in this argument, and the court is not satisfied that it has been refuted.

Since, however, in exercising the power of regulating their own purely internal affairs, whether of trading or police, the States may sometimes enact laws the validity of which depends on their interfering with, and being contrary to, an act of congress passed in pursuance of the constitution, the court will enter upon the inquiry, whether the laws of New York, as expounded by the highest tribunal of that State, have, in their application to this case, come into collision with an act of congress, and deprived a citizen of a right to which that act entitles him. Should this collision exist, it will be immaterial whether those laws were passed in virtue of a concurrent power 'to regulate commerce with foreign nations and among the several States', or in virtue of a power to regulate their domestic trade and police. In one case and the other the acts of New York must yield to the law of congress; and the decision sustaining the privilege they confer against a right given by a law of the Union, must be erroneous. This opinion has been frequently expressed in this court, and is founded as well on the nature of the government as on the words of the constitution. In argument, however, it has been contended that, if a law passed by a State in the exercise of its acknowledged sovereignty, comes into conflict with a law passed by congress in pursuance of the constitution, they affect the subject, and each other, like equal opposing powers. But the framers of the constitution foresaw this state of things, and provided for it by declaring the supremacy not only of itself but of the laws made in pursuance of it. The nullity of any act inconsistent with the constitution is

produced by the declaration that the constitution is supreme law. The appropriate application of that part of the clause which confers the same supremacy on laws and treaties, is to such acts of the State legislatures as do not transcend their powers, but, though enacted in the execution of acknowledged State powers, interfere with, or are contrary to the laws of Congress, made in pursuance of the constitution, or some treaty made under the authority of the United States. In every such case the act of congress, or treaty, is supreme; and the law of the State, though enacted in the exercise of powers not controverted, must yield to it. . . .

Powerful and ingenious minds, taking as postulates that the powers expressly granted to the government of the Union are to be contracted, by construction, into the narrowest possible compass, and that the original powers of the States are to be retained, if any possible construction will retain them, may, by a course of well-digested, but refined and metaphysical reasoning, founded on these premises, explain away the constitution of our country and leave it a magnificent structure indeed, to look at, but totally unfit for use. They may so entangle and perplex the understanding as to obscure principles which were before thought quite plain, and induce doubts where, if the mind were to pursue its own course, none would be perceived. In such a case, it is peculiarly necessary to recur to safe and fundamental principles, to sustain those principles, and, when sustained, to make them the tests of the arguments to be examined.

Decree of Court of New York reversed and annulled and bill of Aaron Ogden dismissed.

## 8. JACKSON'S FIRST INAUGURAL ADDRESS, 1829

[The Presidential Election of 1828 was something of a revolution. The Republican (or Democratic) Party had been in control of the government since 1800 and, with the disappearance of the Federalists, was breaking up into conservative and radical factions. In the election of 1824 there had been only Republican candidates, and the two most important were John Quincy Adams, representing the traditional party, and Andrew Jackson, representing particularly the new States in the West. Jackson gained a majority, though not an absolute majority, of votes, but in the House of Representatives Adams was elected. In 1828 the same two candidates stood for election, and Jackson was easily elected.]

Andrew Jackson stood for something new in American politics, the untutored democracy of the West, which had won its first success when the public lands were thrown open to poorer settlers in 1820. Much in his first inaugural address was, in fact, remarkably indefinite, but one passage declared a new policy which was to affect American politics to this day. It pronounced that the task of reform was demanded by popular sentiment and proceeded to define this as 'particularly the correction of those abuses that have brought the patronage of the federal government into conflict with the freedom of elections and the counteraction of those causes which have disturbed the rightful course of appointment and have placed or continued power in unfaithful or incompetent hands'. In other words, the civil service was to be purged, and adherents of the new President were to replace the old officials. Thus was instituted the 'Spoils System', by which a new President, especially when succeeding one of another party, was expected to reward his adherents with posts in the civil service, especially in the post office department.

The split in the party at the Presidential Election in 1828 led to the formation of two political parties. The supporters of Jackson took the name of Democrats, proudly assuming a title which had been used against the original party as a term of abuse. His opponents took the name of National Republicans, for which was soon substituted the title of the Whigs.]

FELLOW-CITIZENS: About to undertake the arduous duties that I have been appointed to perform by the choice of a free people, I avail myself of this customary and solemn occasion to express the gratitude which their confidence inspires and to acknowledge the accountability which my situation enjoins. While the magnitude of their interests convinces me that no thanks can be adequate to the honor they have conferred, it admonishes me that the best return I can make is the zealous dedication of my humble abilities to their service and their good.

As the instrument of the Federal Constitution it will devolve on me for a stated period to execute the laws of the United States, to superintend their foreign and their confederate relations, to manage their revenue, to command their forces, and, by communications to the Legislature, to watch over and to promote their interests generally. And the principles of action by which I shall endeavor to accomplish this circle of duties it is now proper for me briefly to explain.

In administering the laws of Congress I shall keep steadily in view the limitations as well as the extent of the Executive power, trusting thereby to discharge the functions of my office without transcending its authority. With foreign nations it will be my study to preserve peace and to cultivate friendship on fair and honorable terms, and in the adjustment of any differences that may exist or arise to exhibit the forbearance becoming a powerful nation rather than the sensibility belonging to a gallant people.

In such measures as I may be called on to pursue in regard to the rights of the separate States I hope to be animated by a proper respect for those sovereign members of our Union, taking care not to confound the powers they have reserved to themselves with those they have granted to the Confederacy.

The management of the public revenue—that searching operation in all governments—is among the most delicate and important trusts in ours, and it will, of course, demand no inconsiderable share of my official solicitude. Under every aspect in which it can be considered it would

appear that advantage must result from the observance of a strict and faithful economy. This I shall aim at the more anxiously both because it will facilitate the extinguishment of the national debt, the unnecessary duration of which is incompatible with real independence, and because it will counteract that tendency to public and private profligacy which a profuse expenditure of money by the Government is but too apt to engender. Powerful auxiliaries to the attainment of this desirable end are to be found in the regulations provided by the wisdom of Congress for the specific appropriation of public money and the prompt accountability of public officers.

With regard to a proper selection of the subjects of impost with a view to revenue, it would seem to me that the spirit of equity, caution, and compromise in which the Constitution was formed requires that the great interests of agriculture, commerce, and manufactures should be equally favored, and that perhaps the only exception to this rule should consist in the peculiar encouragement of any products of either of them that may be found essential to our national independence.

Internal improvement and the diffusion of knowledge, so far as they can be promoted by the constitutional Acts of the Federal Government, are of high importance.

Considering standing armies as dangerous to free governments in time of peace, I shall not seek to enlarge our present establishment, nor disregard that salutary lesson of political experience which teaches that the military should be held subordinate to the civil power. The gradual increase of our Navy, whose flag has displayed in distant climes our skill in navigation and our fame in arms; the preservation of our forts, arsenals, and dockyards, and the introduction of progressive improvements in the discipline and science of both branches of our military service are so plainly prescribed by prudence that I should be excused for omitting their mention sooner than for enlarging on their importance. But the bulwark of our defense is the national militia, which in the present state of our

intelligence and population must render us invincible. As long as our Government is administered for the good of the people, and is regulated by their will; as long as it secures to us the rights of person and of property, liberty of conscience and of the press, it will be worth defending; and so long as it is worth defending a patriotic militia will cover it with an impenetrable ægis. Partial injuries and occasional mortifications we may be subjected to, but a million of armed freemen, possessed of the means of war, can never be conquered by a foreign foe. To any just system, therefore, calculated to strengthen this natural safeguard of the country I shall cheerfully lend all the aid in my power.

It will be my sincere and constant desire to observe toward the Indian tribes within our limits a just and liberal policy, and to give that humane and considerate attention to their rights and their wants which is consistent with the habits of our Government and the feelings of our people.

The recent demonstration of public sentiment inscribes on the list of Executive duties, in characters too legible to be overlooked, the task of *reform*, which will require particularly the correction of those abuses that have brought the patronage of the Federal Government into conflict with the freedom of elections, and the counteraction of those causes which have disturbed the rightful course of appointment and have placed or continued power in unfaithful or incompetent hands.

In the performance of a task thus generally delineated I shall endeavor to select men whose diligence and talents will insure in their respective stations able and faithful co-operation, depending for the advancement of the public service more on the integrity and zeal of the public officers than on their numbers.

A diffidence, perhaps too just, in my own qualifications will teach me to look with reverence to the examples of public virtue left by my illustrious predecessors, and with veneration to the lights that flow from the mind that founded and the mind that reformed our system. The same diffidence induces me to hope



for instruction and aid from the co-ordinate branches of the Government, and for the indulgence and support of my fellow-citizens generally. And a firm reliance on the goodness of that Power whose providence mercifully protected our national infancy, and has since upheld our liberties in various vicissitudes, encourages me to offer up my ardent supplications that He will continue to make our beloved country the object of His divine care and gracious benediction.

## 9. WEBSTER'S REPLY TO HAYNE, 1830

[On 29 December 1829 Senator Foot proposed a resolution to inquire whether it were expedient to limit the sales of public lands to those already offered for sale. There followed one of the classic debates in the history of the Senate, which ranged over a wide field. The resolution was prompted by the desire of the Northern manufacturers to preserve the necessary supply of labour from being drained away to the new territories. It was opposed by the Southern planters, who hoped for allies in the recently settled farmers of the West. Senator Hayne of South Carolina attacked Daniel Webster as the representative of Massachusetts, and claimed that, if Massachusetts was right to consider secession during the war of 1812 to 1814, South Carolina was equally justified in 1830.

Webster answered Hayne, his second contribution to the debate, in a speech of great length on 26 and 27 January 1830. Much of it was taken up with a long historical excursus on the part played by Massachusetts in the great controversies of American history. But what made the speech momentous was his answer to the theory of Nullification, that the Union had been made by the people and not by the several States and that in the preservation of the Union alone lay the hopes for the future greatness and prosperity of the United States. The speech was regarded as the classic statement of the position of those who resisted the doctrine of State Rights. The final passages of the speech are printed here.

After Webster had finished his great speech Senator Hayne answered him particularly on the constitutional issue, and Webster made a short reply in which he stressed particularly the popular origin of the Constitution.]

*(a) Second Speech on Foot's Resolution*

. . . I must now beg to ask, Sir, Whence is this supposed right of the States derived? Where do they find the power to interfere with the laws of the Union? Sir, the opinion which the honorable gentleman maintains is a notion founded in a total misapprehension, in my judgment, of the origin of this government, and of the foundation on which it stands. I hold it to be a popular government, erected by the people; those who administer it, responsible to the people; and itself capable of being amended and modified, just as the people may choose it should be. It is as popular, just as truly emanating from the people, as the State governments. It is created for one purpose; the State governments for another. It has its own powers; they have theirs. There is no more authority with them to arrest the operation of a law of Congress, than with Congress to arrest the operation of their laws. We are here to administer a Constitution emanating immediately from the people, and trusted by them to our administration. It is not the creature of the State governments. It is of no moment to the argument, that certain acts of the State legislatures are necessary to fill our seats in this body. That is not one of their original State powers, a part of the sovereignty of the State. It is a duty which the people, by the Constitution itself, have imposed on the State legislatures; and which they might have left to be performed elsewhere, if they had seen fit. So they have left the choice of President with electors; but all this does not affect the proposition that this whole government, President, Senate, and House of Representatives, is a popular government. It leaves it still all its popular character. The governor of a State (in some of the States) is chosen, not directly by the people, but by those who are chosen by the people, for the purpose of performing, among other duties, that of electing a governor. Is the government of the State, on that account, not a popular government? This government, Sir, is the independent offspring of the

popular will. It is not the creature of State legislatures; nay, more, if the whole truth must be told, the people brought it into existence, established it, and have hitherto supported it, for the very purpose, amongst others, of imposing certain salutary restraints on State sovereignties. The States cannot now make war; they cannot contract alliances; they cannot make, each for itself, separate regulations of commerce; they cannot lay imposts; they cannot coin money. If this Constitution, Sir, be the creature of State legislatures, it must be admitted that it has obtained a strange control over the volitions of its creators.

The people, then, Sir, erected this government. They gave it a Constitution, and in that Constitution they have enumerated the powers which they bestow on it. They have made it a limited government. They have defined its authority. They have restrained it to the exercise of such powers as are granted; and all others, they declare, are reserved to the States or the people. But, Sir, they have not stopped here. If they had, they would have accomplished but half their work. No definition can be so clear, as to avoid possibility of doubt; no limitation so precise, as to exclude all uncertainty. Who, then, shall construe this grant of the people? Who shall interpret their will, where it may be supposed they have left it doubtful? With whom do they repose this ultimate right of deciding on the powers of the government? Sir, they have settled all this in the fullest manner. They have left it with the government itself, in its appropriate branches. Sir, the very chief end, the main design, for which the whole Constitution was framed and adopted, was to establish a government that should not be obliged to act through State agency, or depend on State opinion and State discretion. The people had had quite enough of that kind of government under the Confederation. Under that system, the legal action, the application of law to individuals, belonged exclusively to the States. Congress could only recommend; their acts were not of binding force, till the States had adopted and sanctioned

them. Are we in that condition still? Are we yet at the mercy of State discretion and State construction? Sir, if we are, then vain will be our attempt to maintain the Constitution under which we sit.

But, Sir, the people have wisely provided, in the Constitution itself, a proper, suitable mode and tribunal for settling questions of constitutional law. There are in the Constitution grants of powers to Congress, and restrictions on these powers. There are, also, prohibitions on the States. Some authority must, therefore, necessarily exist, having the ultimate jurisdiction to fix and ascertain the interpretation of these grants, restrictions, and prohibitions. The Constitution has itself pointed out, ordained, and established that authority. How has it accomplished this great and essential end? By declaring, Sir, that *'the Constitution, and the laws of the United States made in pursuance thereof, shall be the supreme law of the land, anything in the constitution or laws of any State to the contrary notwithstanding'*.

This, Sir, was the first great step. By this the supremacy of the Constitution and laws of the United States is declared. The people so will it. No State law is to be valid which comes in conflict with the Constitution, or any law of the United States passed in pursuance of it. But who shall decide this question of interference? To whom lies the last appeal? This, Sir, the Constitution itself decides also, by declaring, *'that the judicial power shall extend to all cases arising under the Constitution and laws of the United States'*. These two provisions cover the whole ground. They are, in truth, the keystone of the arch! With these it is a government; without them it is a confederation. In pursuance of these clear and express provisions, Congress, established, at its very first session, in the judicial act, a mode for carrying them into full effect, and for bringing all the questions of constitutional power to the final decision of the Supreme Court. It then, Sir, became a government. It then had the means of self-protection; and but for this, it would, in all probability, have been now among things which are past. Having constituted

the government, and declared its powers, the people have further said, that, since somebody must decide on the extent of these powers, the government shall itself decide; subject, always, like other popular governments, to its responsibility to the people. And now, Sir, I repeat, how is it that a State legislature acquires any power to interfere? Who, or what, gives them the right to say to the people, 'We, who are your agents and servants for one purpose, will undertake to decide, that your other agents and servants, appointed by you for another purpose, have transcended the authority you gave them!' The reply would be, I think, not impertinent,—'Who made you a judge over another's servants? To their own masters they stand or fall.'

Sir, I deny this power of State legislatures altogether. It cannot stand the test of examination. Gentlemen may say that, in an extreme case, a State government might protect the people from intolerable oppression. Sir, in such a case, the people might protect themselves, without the aid of the State governments. Such a case warrants revolution. It must make, when it comes, a law for itself. A Nullifying Act of a State legislature cannot alter the case, nor make resistance any more lawful. In maintaining these sentiments, Sir, I am but asserting the rights of the people. I state what they have declared, and insist on their right to declare it. They have chosen to repose this power in the general government, and I think it my duty to support it, like other constitutional powers.

For myself, Sir, I do not admit the competency of South Carolina, or any other State, to prescribe my constitutional duty; or to settle, between me and the people, the validity of laws of Congress, for which I have voted. I decline her umpirage. I have not sworn to support the Constitution according to her construction of its clauses. I have not stipulated, by my oath of office or otherwise, to come under any responsibility, except to the people, and those whom they have appointed to pass upon the question, whether

laws, supported by my votes, conform to the Constitution of the country. And, Sir, if we look to the general nature of the case, could anything have been more preposterous, than to make a government for the whole Union, and yet leave its powers subject, not to one interpretation, but to thirteen or twenty-four interpretations? Instead of one tribunal, established by all, responsible to all, with power to decide for all, shall constitutional questions be left to four-and-twenty popular bodies, each at liberty to decide for itself, and none bound to respect the decisions of others; and each at liberty, too, to give a new construction on every new election of its own members? Would anything, with such a principle in it, or rather with such a destitution of all principle, be fit to be called a government? No, Sir. It should not be denominated a Constitution. It should be called, rather, a collection of topics for everlasting controversy; heads of debate for a disputatious people. It would not be a government. It would not be adequate to any practical good, or fit for any country to live under.

To avoid all possibility of being misunderstood, allow me to repeat again, in the fullest manner, that I claim no powers for the government by forced or unfair construction. I admit that it is a government of strictly limited powers; of enumerated, specified, and particularized powers; and that whatsoever is not granted, is withheld. But notwithstanding all this, and however the grant of powers may be expressed, its limit and extent may yet, in some cases, admit of doubt; and the general government would be good for nothing, it would be incapable of long existing, if some mode had not been provided in which those doubts, as they should arise, might be peaceably, but authoritatively, solved.

And now, Mr President, let me run the honorable gentleman's doctrine a little into its practical application. Let us look at his probable *modus operandi*. If a thing can be done, an ingenious man can tell *how* it is to be done, and I wish to be informed *how* this State

interference is to be put in practice, without violence, bloodshed, and rebellion. We will take the existing case of the tariff law. South Carolina is said to have made up her opinion upon it. If we do not repeal it (as we probably shall not), she will then apply to the case the remedy of her doctrine. She will, we must suppose, pass a law of her legislature, declaring the several Acts of Congress, usually called the tariff laws, null and void, so far as they respect South Carolina, or the citizens thereof. So far, all is a paper transaction, and easy enough. But the collector at Charleston is collecting the duties imposed by these tariff laws. He, therefore, must be stopped. The collector will seize the goods if the tariff duties are not paid. The State authorities will undertake their rescue, the marshal, with his posse, will come to the collector's aid, and here the contest begins. The militia of the State will be called out to sustain the Nullifying Act. They will march, Sir, under a very gallant leader; for I believe the honorable member himself commands the militia of that part of the State. He will raise the NULLIFYING ACT on his standard, and spread it out as his banner! It will have a preamble, setting forth, that the tariff laws are palpable, deliberate, and dangerous violations of the Constitution! He will proceed, with this banner flying, to the custom-house in Charleston,

‘All the while,  
Sonorous metal blowing martial sounds.’

Arrived at the custom-house, he will tell the collector that he must collect no more duties under any of the tariff laws. This he will be somewhat puzzled to say, by the way, with a grave countenance, considering what hand South Carolina herself had in that of 1816. But, Sir, the collector would not, probably, desist, at his bidding. He would show him the law of Congress, the treasury instruction, and his own oath of office. He would say, he should perform his duty, come what come might.

Here would ensue a pause; for they say that a certain

stillness precedes the tempest. The trumpeter would hold his breath awhile, and before all this military array should fall on the custom-house, collector, clerks, and all, it is very probable some of those composing it would request of their gallant commander-in-chief to be informed a little upon the point of law; for they have, doubtless, a just respect for his opinions as a lawyer, as well as for his bravery as a soldier. They know he has read Blackstone and the Constitution, as well as Turenne and Vauban. They would ask him, therefore, something concerning their rights in this matter. They would inquire, whether it was not somewhat dangerous to resist a law of the United States. What would be the nature of their offence, they would wish to learn, if they, by military force and array, resisted the execution in Carolina of a law of the United States, and it should turn out, after all, that the law *was constitutional*? He would answer, of course, Treason. No lawyer could give any other answer. John Fries, he would tell them, had learned that, some years ago. How, then, they would ask, do you propose to defend us? We are not afraid of bullets, but treason has a way of taking people off that we do not much relish. How do you propose to defend us? 'Look at my floating banner,' he would reply; 'see there the *nullifying law*!' Is it your opinion, gallant commander, they would then say, that, if we should be indicted for treason, that same floating banner of yours would make a good plea in bar? 'South Carolina is a sovereign State,' he would reply. That is true; but would the judge admit our plea? 'These tariff laws,' he would repeat, 'are unconstitutional, palpably, deliberately, dangerously.' That may all be so; but if the tribunal should not happen to be of that opinion, shall we swing for it? We are ready to die for our country, but it is rather an awkward business, this dying without touching the ground! After all, that is a sort of hemp tax worse than any part of the tariff.

Mr President, the honorable gentleman would be in a dilemma, like that of another great general. He would have a knot before him which he could not untie.



He must cut it with his sword. He must say to his followers, 'Defend yourselves with your bayonets'; and this is war—civil war.

Direct collision, therefore, between force and force, is the unavoidable result of that remedy for the revision of unconstitutional laws which the gentleman contends for. It must happen in the very first case to which it is applied. Is not this the plain result? To resist by force the execution of a law, generally, is treason. Can the courts of the United States take notice of the indulgence of a State to commit treason? The common saying, that a State cannot commit treason herself, is nothing to the purpose. Can she authorize others to do it? If John Fries had produced an Act of Pennsylvania, annulling the law of Congress, would it have helped his case? Talk about it as we will, these doctrines go the length of revolution. They are incompatible with any peaceable administration of the government. They lead directly to disunion and civil commotion; and therefore it is, that at their commencement, when they are first found to be maintained by respectable men, and in a tangible form, I enter my public protest against them all.

The honorable gentleman argues, that if this government be the sole judge of the extent of its own powers, whether that right of judging be in Congress or the Supreme Court, it equally subverts State sovereignty. This the gentleman sees, or thinks he sees, although he cannot perceive how the right of judging, in this matter, if left to the exercise of State legislatures, has any tendency to subvert the government of the Union. The gentleman's opinion may be, that the right *ought not* to have been lodged with the general government; he may like better such a constitution as we should have under the right of State interference; but I ask him to meet me on the plain matter of fact. I ask him to meet me on the Constitution itself. I ask him if the power is not found there, clearly and visibly found there?

But, Sir, what is this danger, and what are the grounds of it? Let it be remembered, that the Constitution of

the United States is not unalterable. It is to continue in its present form no longer than the people who established it shall choose to continue it. If they shall become convinced that they have made an injudicious or inexpedient partition and distribution of power between the State governments and the general government, they can alter that distribution at will.

If anything be found in the national Constitution, either by original provision or subsequent interpretation, which ought not to be in it, the people know how to get rid of it. If any construction, unacceptable to them, be established, so as to become practically a part of the Constitution, they will amend it, at their own sovereign pleasure. But while the people choose to maintain it as it is, while they are satisfied with it, and refuse to change it, who has given, or who can give, to the State legislatures a right to alter it, either by interference, construction, or otherwise? Gentlemen do not seem to recollect that the people have any power to do anything for themselves. They imagine there is no safety for them, any longer than they are under the close guardianship of the State legislatures. Sir, the people have not trusted their safety, in regard to the general Constitution, to these hands. They have required other security, and taken other bonds. They have chosen to trust themselves, first, to the plain words of the instrument, and to such construction as the government themselves, in doubtful cases, should put on their own powers, under their oaths of office, and subject to their responsibility to them; just as the people of a State trust their own State governments with a similar power. Secondly, they have reposed their trust in the efficacy of frequent elections, and in their own power to remove their own servants and agents whenever they see cause. Thirdly, they have reposed trust in the judicial power, which, in order that it might be trustworthy, they have made as respectable, as disinterested, and as independent as was practicable. Fourthly, they have seen fit to rely, in case of necessity, or high expediency, on their known and admitted power to alter or amend the Constitution,

peaceably and quietly, whenever experience shall point out defects or imperfections. And, finally, the people of the United States have at no time, in no way, directly or indirectly, authorized any State legislature to construe, or interpret *their* high instrument of government; much less, to interfere, by their own power, to arrest its course and operation.

If, Sir, the people in these respects had done otherwise than they have done, their constitution could neither have been preserved, nor would it have been worth preserving. And if its plain provisions shall now be disregarded, and these new doctrines interpolated in it, it will become as feeble and helpless a being as its enemies, whether early or more recent, could possibly desire. It will exist in every State but as a poor dependent on State permission. It must borrow leave to be; and will be, no longer than State pleasure, or State discretion, sees fit to grant the indulgence, and to prolong its poor existence.

But, Sir, although there are fears, there are hopes also. The people have preserved this, their own chosen Constitution, for forty years, and have seen their happiness, prosperity, and renown grow with its growth, and strengthen with its strength. They are now, generally, strongly attached to it. Overthrown by direct assault, it cannot be; evaded, undermined, NULLIFIED, it will not be, if we, and those who shall succeed us here, as agents and representatives of the people, shall conscientiously and vigilantly discharge the two great branches of our public trust, faithfully to preserve, and wisely to administer it.

Mr President, I have thus stated the reasons of my dissent to the doctrines which have been advanced and maintained. I am conscious of having detained you and the Senate much too long. I was drawn into the debate with no previous deliberation, such as is suited to the discussion of so grave and important a subject. But it is a subject of which my heart is full, and I have not been willing to suppress the utterance of its spontaneous sentiments. I cannot, even now, persuade

myself to relinquish it, without expressing once more my deep conviction, that, since it respects nothing less than the Union of the States, it is of most vital and essential importance to the public happiness. I profess, Sir, in my career hitherto, to have kept steadily in view the prosperity and honor of the whole country, and the preservation of our Federal Union. It is to that Union we owe our safety at home, and our consideration and dignity abroad. It is to that Union that we are chiefly indebted for whatever makes us most proud of our country. That Union we reached only by the discipline of our virtues in the severe school of adversity. It had its origin in the necessities of disordered finance, prostrate commerce, and ruined credit. Under its benign influences, these great interests immediately awoke, as from the dead, and sprang forth with newness of life. Every year of its duration has teemed with fresh proofs of its utility and its blessings; and although our territory has stretched out wider and wider, and our population spread farther and farther, they have not outrun its protection or its benefits. It has been to us all a copious fountain of national, social, and personal happiness.

I have not allowed myself, Sir, to look beyond the Union, to see what might lie hidden in the dark recess behind. I have not coolly weighed the chances of preserving liberty when the bonds that unite us together shall be broken asunder. I have not accustomed myself to hang over the precipice of disunion, to see whether, with my short sight, I can fathom the depth of the abyss below; nor could I regard him as a safe counsellor in the affairs of this government, whose thoughts should be mainly bent on considering, not how the Union may be best preserved, but how tolerable might be the condition of the people when it should be broken up and destroyed. While the Union lasts, we have high, exciting, gratifying prospects spread out before us, for us and our children. Beyond that I seek not to penetrate the veil. God grant that in my day, at least, that curtain may not rise! God grant that on my vision

never may be opened what lies behind! When my eyes shall be turned to behold for the last time the sun in heaven, may I not see him shining on the broken and dishonored fragments of a once glorious Union; on States dissevered, discordant, belligerent; on a land rent with civil feuds, or drenched, it may be, in fraternal blood! Let their last feeble and lingering glance rather behold the gorgeous ensign of the republic, now known and honored throughout the earth, still full high advanced, its arms and trophies streaming in their original lustre, not a stripe erased or polluted, nor a single star obscured, bearing for its motto, no such miserable interrogatory as 'What is all this worth?' nor those other words of delusion and folly, 'Liberty first and Union afterwards'; but everywhere, spread all over in characters of living light, blazing on all its ample folds, as they float over the sea and over the land, and in every wind under the whole heavens, that other sentiment, dear to every true American heart—Liberty and Union, now and for ever, one and inseparable!

(b) *Last Remarks on Foot's Resolution*

. . . I have admitted, that, if the Constitution were to be considered as the creature of the State governments, it might be modified, interpreted, or construed according to their pleasure. But, even in that case, it would be necessary that they should *agree*. One alone could not interpret it conclusively; one alone could not construe it; one alone could not modify it. Yet the gentleman's doctrine is, that Carolina alone may construe and interpret that compact which equally binds all, and gives equal rights to all.

So, then, Sir, even supposing the Constitution to be a compact between the States, the gentleman's doctrine, nevertheless, is not maintainable; because, first, the general government is not a party to that compact, but a *government* established by it, and vested by it with the powers of trying and deciding doubtful questions; and secondly, because, if the Constitution be regarded as a compact, not one State, but all the States, are parties to

that compact, and one can have no right to fix upon it her own peculiar construction.

So much, Sir, for the argument, even if the premises of the gentleman were granted, or could be proved. But, Sir, the gentleman has failed to maintain his leading proposition. He has not shown, it cannot be shown, that the Constitution is a compact between State governments. The Constitution itself, in its very front, refutes that idea; it declares that it is ordained and established *by the people of the United States*. So far from saying that it is established by the governments of the several States, it does not even say that it is established by the *people of the several States*; but it pronounces that it is established by the people of the United States, in the aggregate. The gentleman says, it must mean no more than the people of the several States. Doubtless, the people of the several States, taken collectively, constitute the people of the United States; but it is in this, their collective capacity, it is as all the people of the United States, that they establish the Constitution. So they declare; and words cannot be plainer than the words used.

When the gentleman says the Constitution is a compact between the States, he uses language exactly applicable to the old Confederation. He speaks as if he were in Congress before 1789. He describes fully that old state of things then existing. The Confederation was, in strictness, a compact: the States, as States, were parties to it. We had no other general government. But that was found insufficient, and inadequate to the public exigencies. The people were not satisfied with it, and undertook to establish a better. They undertook to form a general government, which should stand on a new basis; not a confederacy, not a league, not a compact between States, but a *Constitution*; a popular government, founded in popular election, directly responsible to the people themselves, and divided into branches with prescribed limits of power, and prescribed duties. They ordained such a government, they gave it the name of a *Constitution*, and therein

they established a distribution of powers between this, their general government, and their several State governments. When they shall become dissatisfied with this distribution, they can alter it. Their own power over their own instrument remains. But until they shall alter it, it must stand as their will, and is equally binding on the general government and on the States.

The gentleman, Sir, finds analogy where I see none. He likens it to the case of a treaty, in which, there being no common superior, each party must interpret for itself, under its own obligation of good faith. But this is not a treaty, but a constitution of government, with powers to execute itself, and fulfil its duties.

I admit, Sir, that this government is a government of checks and balances; that is, the House of Representatives is a check on the Senate, and the Senate is a check on the House, and the President a check on both. But I cannot comprehend him, or, if I do, I totally differ from him, when he applies the notion of checks and balances to the interference of different governments. He argues, that, if we transgress our constitutional limits, each State, as a State, has a right to check us. Does he admit the converse of the proposition, that we have a right to check the States? The gentleman's doctrines would give us a strange jumble of authorities and powers, instead of governments of separate and defined powers. It is the part of wisdom, I think, to avoid this; and to keep the general government and the State government each in its proper sphere, avoiding as carefully as possible every kind of interference.

Finally, Sir, the honorable gentleman says, that the States will only interfere, by their power, to preserve the Constitution. They will not destroy it, they will not impair it; they will only save, they will only preserve, they will only strengthen it! Ah! Sir, this is but the old story. All regulated governments, all free governments, have been broken by similar disinterested and well-disposed interference. It is the common pretence. But I take leave of the subject.

## 10. THE FIRST NUMBER OF *THE LIBERATOR*

I JANUARY 1831

[William Lloyd Garrison (1805-79) was born in Newburyport, Massachusetts. He was apprenticed as a shoemaker, became a printer, took to journalism, and at the age of twenty-one became the editor of the *Newburyport Free Press*. In 1828 he met Benjamin Lundy, a New Jersey Quaker, who had founded the Union Humane Society to oppose negro slavery, and he became converted to the cause. Garrison advocated the immediate and total abolition of slavery, in contrast to the prevalent view in the North that the institution might be expected gradually to disappear. In 1830 Samuel E. Sewall, a young Boston lawyer, assisted him to found a new journal, to be named *The Liberator*, to advocate the Abolitionist cause, and the first number contained an Address to the Public which made its author famous and before long his cause a powerful influence in American politics.]

### *To the Public*

In the month of August, I issued proposals for publishing *The Liberator* in Washington City; but the enterprise, though hailed in different sections of the country, was palsied by public indifference. Since that time, the removal of the *Genius of Universal Emancipation* to the Seat of Government has rendered less imperious the establishment of a similar periodical in that quarter.

During my recent tour for the purpose of exciting the minds of the people by a series of discourses on the subject of slavery, every place that I visited gave fresh evidence of the fact, that a greater revolution in public sentiment was to be effected in the free States—and particularly in *New England*—than at the South. I found contempt more bitter, opposition more active, detraction more relentless, prejudice more stubborn, and apathy more frozen, than among slave-owners themselves. Of course, there were individual exceptions to the contrary. This state of things afflicted, but did not dishearten



me. I determined, at every hazard, to lift up the standard of emancipation in the eyes of the nation, *within sight of Bunker Hill and in the birthplace of liberty*. That standard is now unfurled; and long may it float, unhurt by the spoliations of time or the missiles of a desperate foe—yca, till every chain be broken, and every bondman set free! Let Southern oppressors tremble—let their secret abettors tremble—let their Northern apologists tremble—let all the enemies of the persecuted blacks tremble.

I deem the publication of my original Prospectus unnecessary, as it has obtained a wide circulation. The principles therein inculcated will be steadily pursued in this paper, excepting that I shall not array myself as the political partisan of any man. In defending the great cause of human rights, I wish to derive the assistance of all religions and of all parties.

Assenting to the 'self-evident truth' maintained in the American Declaration of Independence, 'that all men are created equal, and endowed by their Creator with certain inalienable rights—among which are life, liberty and the pursuit of happiness', I shall strenuously contend for the immediate enfranchisement of our slave population. In Park Street Church, on the Fourth of July, 1829, in an address on slavery, I unreflectingly assented to the popular but pernicious doctrine of *gradual* abolition. I seize this opportunity to make a full and unequivocal recantation, and thus publicly to ask pardon of my God, of my country, and of my brethren the poor slaves, for having uttered a sentiment so full of timidity, injustice, and absurdity. A similar recantation, from my pen, was published in the *Genius of Universal Emancipation* at Baltimore, in September, 1829. My conscience is now satisfied.

I am aware that many object to the severity of my language; but is there not cause for severity? I *will* be as harsh as truth, and as uncompromising as justice. On this subject, I do not wish to think, or speak, or write, with moderation. No! no! Tell a man whose house is on fire to give a moderate alarm; tell him to

moderately rescue his wife from the hands of the ravisher; tell the mother to gradually extirpate her babe from the fire into which it has fallen;—but urge me not to use moderation in a cause like the present. I am in earnest—I will not equivocate—I will not excuse—I will not retreat a single inch—AND I WILL BE HEARD. The apathy of the people is enough to make every statue leap from its pedestal, and to hasten the resurrection of the dead.

It is pretended, that I am retarding the cause of emancipation by the coarseness of my invective and the precipitancy of my measures. *The charge is not true.* On this question my influence,—humble as it is,—is felt at this moment to a considerable extent, and shall be felt in coming years—not perniciously, but beneficially—not as a curse, but as a blessing; and posterity will bear testimony that I was right. I desire to thank God, that he enables me to disregard ‘the fear of man which bringeth a snare’, and to speak his truth in its simplicity and power. And here I close with this fresh dedication:

‘Oppression! I have seen thee, face to face,  
And met thy cruel eye and cloudy brow;  
But thy soul-withering glance I fear not now—  
For dread to prouder feelings doth give place  
Of deep abhorrence! Scorning the disgrace  
Of slavish knees that at thy footstool bow,  
I also kneel—but with far other vow  
Do hail thee and thy herd of hucklings base:—  
I swear, while life-blood warms my throbbing veins,  
Still to oppose and thwart, with heart and hand,  
Thy brutalising sway—till Afric’s chains  
Are burst, and Freedom rules the rescued land,—  
Trampling Oppression and his iron rod:  
*Such is the vow I take—SO HELP ME GOD!*’<sup>1</sup>

WILLIAM LLOYD GARRISON.

BOSTON, 1 *January* 1831.

<sup>1</sup> This sonnet was written by Thomas Pringle, Secretary of the London Society for the Abolition of Slavery throughout the British Dominions.

## 11. JACKSON'S 'STRUGGLE WITH THE BANK OF THE UNITED STATES, 1832, 1833

[In his first annual address of 7 December 1829 Jackson began his great attack on the second Bank of the United States, which had been chartered in 1816. The Bank was extremely unpopular with the Western farmers, whom Jackson specially represented, and the managers were accused of political partisanship. Perhaps its chief crime was that it had driven out of business the State Banks of the South and West, but it was distrusted as a powerful financial monopoly. Its charter was due to be renewed in 1836, but the managers applied to Congress for a new charter in 1832 and this was granted. President Jackson promptly vetoed the Bill and, as there was not the necessary two-thirds majority in the Senate to override his veto, the Bill lapsed.

In the same year Jackson was re-elected as President by a large majority and he then returned to the attack. As head of the Executive Jackson ordered the Secretary of the Treasury to remove the Government deposits from the Bank or any of its branches. On 28 March 1833 the Senate passed two resolutions censuring the President's actions. Jackson replied, on 15 April, with a formal protest against the censure. (Eventually on 16 January 1837 the Senate expunged the resolution of censure.)

Jackson's financial arguments are of no particular interest, but his veto of the Bank Charter Bill and his protest to the Senate are a turning-point in the history of the American Presidency. In his Veto Message Jackson attacked not only the monopoly of the Bank, but also the position of the Supreme Court, which had supported the Bank in the case of *McCulloch v. Maryland*. In his protest against the Senate's censure he emphasized the undemocratic nature of the Senate and the popular support on which rested the Presidential power.]

### (a) *Veto Message, 10 July 1832*

*To the Senate:*

The Bill 'to modify and continue' the Act entitled 'An Act to incorporate the subscribers to the Bank of the United States' was presented to me on the 4th July instant. Having considered it with that solemn regard

to the principles of the Constitution which the day was calculated to inspire, and come to the conclusion that it ought not to become a law, I herewith return it to the Senate, in which it originated, with my objections.

A bank of the United States is in many respects convenient for the Government and useful to the people. Entertaining this opinion, and deeply impressed with the belief that some of the powers and privileges possessed by the existing bank are unauthorized by the Constitution, subversive of the rights of the States, and dangerous to the liberties of the people, I felt it my duty at an early period of my Administration to call the attention of Congress to the practicability of organizing an institution combining all its advantages and obviating these objections. I sincerely regret that in the Act before me I can perceive none of those modifications of the bank charter which are necessary, in my opinion, to make it compatible with justice, with sound policy, or with the Constitution of our country. . . .

Is there no danger to our liberty and independence in a bank that in its nature has so little to bind it to our country? The president of the bank has told us that most of the State banks exist by its forbearance. Should its influence become concentrated, as it may under the operation of such an Act as this, in the hands of a self-elected directory whose interests are identified with those of the foreign stockholders, will there not be cause to tremble for the purity of our elections in peace and for the independence of our country in war? Their power would be great whenever they might choose to exert it; but if this monopoly were regularly renewed every fifteen or twenty years on terms proposed by themselves, they might seldom in peace put forth their strength to influence elections or control the affairs of the nation. But if any private citizen or public functionary should interpose to curtail its powers or prevent a renewal of its privileges, it cannot be doubted that he would be made to feel its influence. . . .

It is maintained by the advocates of the bank that its constitutionality in all its features ought to be

considered as settled by precedent and by the decision of the Supreme Court. To this conclusion I cannot assent. Mere precedent is a dangerous source of authority, and should not be regarded as deciding questions of constitutional power except where the acquiescence of the people and the States can be considered as well settled. So far from this being the case on this subject, an argument against the bank might be based on precedent. One Congress, in 1791, decided in favor of a bank; another, in 1811, decided against it. One Congress, in 1815, decided against a bank; another, in 1816, decided in its favor. Prior to the present Congress, therefore, the precedents drawn from that source were equal. If we resort to the States, the expressions of legislative, judicial, and executive opinions against the bank have been probably to those in its favor as 4 to 1. There is nothing in precedent, therefore, which, if its authority were admitted, ought to weigh in favor of the Act before me.

If the opinion of the Supreme Court covered the whole ground of this Act, it ought not to control the co-ordinate authorities of this Government. The Congress, the Executive, and the Court must each for itself be guided by its own opinion of the Constitution. Each public officer who takes an oath to support the Constitution swears that he will support it as he understands it, and not as it is understood by others. It is as much the duty of the House of Representatives, of the Senate, and of the President to decide upon the constitutionality of any Bill or resolution which may be presented to them for passage or approval as it is of the supreme judges when it may be brought before them for judicial decision. The opinion of the judges has no more authority over Congress than the opinion of Congress has over the judges, and on that point the President is independent of both. The authority of the Supreme Court must not, therefore, be permitted to control the Congress or the Executive when acting in their legislative capacities, but to have only such influence as the force of their reasoning may deserve.

But in the case relied upon the Supreme Court have not decided that all the features of this corporation are compatible with the Constitution. It is true that the court have said that the law incorporating the bank is a constitutional exercise of power by Congress: but taking into view the whole opinion of the court and the reasoning by which they have come to that conclusion, I understand them to have decided that inasmuch as a bank is an appropriate means for carrying into effect the enumerated powers of the General Government, therefore the law incorporating it is in accordance with that provision of the Constitution which declares that Congress shall have power 'to make all laws which shall be necessary and proper for carrying those powers into execution'. Having satisfied themselves that the word 'necessary' in the Constitution means 'needful', 'requisite', 'essential', 'conducive to', and that 'a bank' is a convenient, a useful, and essential instrument in the prosecution of the Government's 'fiscal operations', they conclude that to 'use one must be within the discretion of Congress' and that 'the act to incorporate the Bank of the United States is a law made in pursuance of the Constitution'; 'but,' say they, '*where the law is not prohibited and is really calculated to effect any of the objects intrusted to the Government, to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department and to tread on legislative ground.*'

The principle here affirmed is that the 'degree of its necessity', involving all the details of a banking institution, is a question exclusively for legislative consideration. A bank is constitutional, but it is the province of the Legislature to determine whether this or that particular power, privilege, or exemption is 'necessary and proper' to enable the bank to discharge its duties to the Government, and from their decision there is no appeal to the courts of justice. Under the decision of the Supreme Court, therefore, it is the exclusive province of Congress and the President to decide whether the particular features of this Act are *necessary* and *proper* in order to enable the bank to perform

conveniently and efficiently the public duties assigned to it as a fiscal agent, and therefore constitutional, or *unnecessary* and *improper*, and therefore unconstitutional. . . .

Under such circumstances the bank comes forward and asks a renewal of its charter for a term of fifteen years upon conditions which not only operate as a gratuity to the stockholders of many millions of dollars, but will sanction any abuses and legalize any encroachments.

Suspicious are entertained and charges are made of gross abuse and violation of its charter. An investigation unwillingly conceded and so restricted in time as necessarily to make it incomplete and unsatisfactory discloses enough to excite suspicion and alarm. In the practices of the principal bank partially unveiled, in the absence of important witnesses, and in numerous charges confidently made and as yet wholly uninvestigated there was enough to induce a majority of the committee of investigation—a committee which was selected from the most able and honorable members of the House of Representatives—to recommend a suspension of further action upon the bill and a prosecution of the inquiry. As the charter had yet four years to run, and as a renewal now was not necessary to the successful prosecution of its business, it was to have been expected that the bank itself, conscious of its purity and proud of its character, would have withdrawn its application for the present, and demanded the severest scrutiny into all its transactions. In their declining to do so there seems to be an additional reason why the functionaries of the Government should proceed with less haste and more caution in the renewal of their monopoly. . . .

It is to be regretted that the rich and powerful too often bend the Acts of government to their selfish purposes. Distinctions in society will always exist under every just government. Equality of talents, of education, or of wealth cannot be produced by human institutions. In the full enjoyment of the gifts of Heaven and the fruits of superior industry, economy, and virtue, every man is equally entitled to protection

by law; but when the laws undertake to add to these natural and just advantages artificial distinctions, to grant titles, gratuities, and exclusive privileges, to make the rich richer and the potent more powerful, the humble members of society—the farmers, mechanics, and laborers—who have neither the time nor the means of securing like favors to themselves, have a right to complain of the injustice of their Government. There are no necessary evils in government. Its evils exist only in its abuses. If it would confine itself to equal protection, and, as Heaven does its rains, shower its favors alike on the high and the low, the rich and the poor, it would be an unqualified blessing. In the Act before me there seems to be a wide and unnecessary departure from these just principles.

Nor is our Government to be maintained or our Union preserved by invasions of the rights and powers of the several States. In thus attempting to make our General Government strong we make it weak. Its true strength consists in leaving individuals and States as much as possible to themselves—in making itself felt, not in its power, but in its beneficence; not in its control, but in its protection; not in binding the States more closely to the center, but leaving each to move unobstructed in its proper orbit.

Experience should teach us wisdom. Most of the difficulties our Government now encounters and most of the dangers which impend over our Union have sprung from an abandonment of the legitimate objects of Government by our national legislation, and the adoption of such principles as are embodied in this Act. Many of our rich men have not been content with equal protection and equal rights, but have besought us to make them richer by Act of Congress. By attempting to gratify their desires we have in the results of our legislation arrayed section against section, interest against interest, and man against man, in a fearful commotion which threatens to shake the foundations of our Union. It is time to pause in our career to review our principles, and if possible revive that



devoted patriotism and spirit of compromise which distinguished the sages of the Revolution and the fathers of our Union. If we cannot at once, in justice to interests vested under improvident legislation, make our Government what it ought to be, we can at least take a stand against all new grants of monopolies and exclusive privileges, against any prostitution of our Government to the advancement of the few at the expense of the many, and in favor of compromise and gradual reform in our code of laws and system of political economy.

I have now done my duty to my country. If sustained by my fellow-citizens, I shall be grateful and happy; if not, I shall find in the motives which impel me ample grounds for contentment and peace. In the difficulties which surround us and the dangers which threaten our institutions there is cause for neither dismay nor alarm. For relief and deliverance let us firmly rely on that kind Providence which I am sure watches with peculiar care over the destinies of our Republic, and on the intelligence and wisdom of our countrymen. Through *His* abundant goodness and *their* patriotic devotion our liberty and Union will be preserved.

ANDREW JACKSON.

(b) *Protest to the Senate, 15 April 1833*

*To the Senate of the United States:*

It appears by the published Journal of the Senate that on the 26th of December last a resolution was offered by a member of the Senate, which after a protracted debate was on the 28th day of March last modified by the mover and passed by the votes of twenty-six Senators out of forty-six who were present and voted, in the following words, viz.:

*Resolved*, That the President, in the late Executive proceedings in relation to the public revenue, has assumed upon himself authority and power not conferred by the Constitution and laws, but in derogation of both.

Having had the honor, through the voluntary

suffrages of the American people, to fill the office of President of the United States during the period which may be presumed to have been referred to in this resolution, it is sufficiently evident that the censure it inflicts was intended for myself. Without notice, unheard and untried, I thus find myself charged on the records of the Senate, and in a form hitherto unknown in our history, with the high crime of violating the laws and Constitution of my country.

It can seldom be necessary for any department of the Government, when assailed in conversation or debate or by the strictures of the press or of popular assemblies, to step out of its ordinary path for the purpose of vindicating its conduct or of pointing out any irregularity or injustice in the manner of the attack; but when the Chief Executive Magistrate is, by one of the most important branches of the Government in its official capacity, in a public manner, and by its recorded sentence, but without precedent, competent authority, or just cause, declared guilty of a breach of the laws and Constitution, it is due to his station, to public opinion, and to a proper self-respect that the officer thus denounced should promptly expose the wrong which has been done. . . .

Under the Constitution of the United States the powers and functions of the various departments of the Federal Government and their responsibilities for violation or neglect of duty are clearly defined or result by necessary inference. The legislative power is, subject to the qualified negative of the President, vested in the Congress of the United States, composed of the Senate and House of Representatives; the executive power is vested exclusively in the President, except that in the conclusion of treaties and in certain appointments to office he is to act with the advice and consent of the Senate; the judicial power is vested exclusively in the Supreme and other courts of the United States, except in cases of impeachment, for which purpose the accusatory power is vested in the House of Representatives and that of hearing and determining in the Senate.

But although for the special purposes which have been mentioned there is an occasional intermixture of the powers of the different departments, yet with these exceptions each of the three great departments is independent of the others in its sphere of action, and when it deviates from that sphere is not responsible to the others further than it is expressly made so in the Constitution. In every other respect each of them is the coequal of the other two, and all are the servants of the American people, without power or right to control or censure each other in the service of their common superior, save only in the manner and to the degree which that superior has prescribed.

The responsibilities of the President are numerous and weighty. He is liable to impeachment for high crimes and misdemeanors, and on due conviction to removal from office and perpetual disqualification; and notwithstanding such conviction, he may also be indicted and punished according to law. He is also liable to the private action of any party who may have been injured by his illegal mandates or instructions in the same manner and to the same extent as the humblest functionary. In addition to the responsibilities which may thus be enforced by impeachment, criminal prosecution, or suit at law, he is also accountable at the bar of public opinion for every act of his Administration. Subject only to the restraints of truth and justice, the free people of the United States have the undoubted right, as individuals or collectively, orally or in writing, at such times and in such language and form as they may think proper, to discuss his official conduct and to express and promulgate their opinions concerning it. Indirectly also his conduct may come under review in either branch of the Legislature, or in the Senate when acting in its executive capacity, and so far as the executive or legislative proceedings of these bodies may require it, it may be exercised by them. These are believed to be the proper and only modes in which the President of the United States is to be held accountable for his official conduct. . . .

That the Senate possesses a high judicial power and that instances may occur in which the President of the United States will be amenable to it is undeniable; but under the provisions of the Constitution it would seem to be equally plain that neither the President nor any other officer can be rightfully subjected to the operation of the judicial power of the Senate except in the cases and under the forms prescribed by the Constitution.

The Constitution declares that 'the President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors': that the House of Representatives 'shall have the sole power of impeachment'; that the Senate 'shall have the sole power to try all impeachments'; that 'when sitting for that purpose they shall be on oath or affirmation': that 'when the President of the United States is tried the Chief Justice shall preside': that 'no person shall be convicted without the concurrence of two-thirds of the members present', and that 'judgment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States'.

The resolution above quoted charges, in substance, that in certain proceedings relating to the public revenue the President has usurped authority and power not conferred upon him by the Constitution and laws, and that in doing so he violated both. Any such act constitutes a high crime—one of the highest, indeed, which the President can commit—a crime which justly exposes him to impeachment by the House of Representatives, and, upon due conviction, to removal from office and to the complete and immutable disfranchisement prescribed by the Constitution. The resolution, then, was in substance an impeachment of the President, and in its passage amounts to a declaration by a majority of the Senate that he is guilty of an impeachable offense. As such it is spread upon the journals of the Senate, published to the nation and to the world, made part of

our enduring archives, and incorporated in the history of the age. The punishment of removal from office and future disqualification does not, it is true, follow this decision, nor would it have followed the like decision if the regular forms of proceeding had been pursued, because the requisite number did not concur in the result. But the moral influence of a solemn declaration by a majority of the Senate that the accused is guilty of the offense charged upon him has been as effectually secured as if the like declaration had been made upon an impeachment expressed in the same terms. Indeed, a greater practical effect has been gained, because the votes given for the resolution, though not sufficient to authorize a judgment of guilty on an impeachment, were numerous enough to carry that resolution.

That the resolution does not expressly allege that the assumption of power and authority which it condemns was intentional and corrupt is no answer to the preceding view of its character and effect. The act thus condemned necessarily implies volition and design in the individual to whom it is imputed, and, being unlawful in its character, the legal conclusion is that it was prompted by improper motives and committed with an unlawful intent. The charge is not of a mistake in the exercise of supposed powers, but of the assumption of powers not conferred by the Constitution and laws, but in derogation of both, and nothing is suggested to excuse or palliate the turpitude of the act. In the absence of any such excuse or palliation there is only room for one inference, and that is that the intent was unlawful and corrupt. Besides, the resolution not only contains no mitigating suggestions, but, on the contrary, it holds up the act complained of as justly obnoxious to censure and reprobation, and thus as distinctly stamps it with impurity of motive as if the strongest epithets had been used.

The President of the United States, therefore, has been by a majority of his constitutional triers accused and found guilty of an impeachable offense, but in

no part of this proceeding have the directions of the Constitution been observed.

The impeachment, instead of being preferred and prosecuted by the House of Representatives, originated in the Senate, and was prosecuted without the aid or concurrence of the other House. The oath or affirmation prescribed by the Constitution was not taken by the Senators, the Chief Justice did not preside, no notice of the charge was given to the accused, and no opportunity afforded him to respond to the accusation, to meet his accusers face to face, to cross-examine the witnesses, to procure counteracting testimony, or to be heard in his defense. The safeguards and formalities which the Constitution has connected with the power of impeachment were doubtless supposed by the framers of that instrument to be essential to the protection of the public servant, to the attainment of justice, and to the order, impartiality, and dignity of the procedure. These safeguards and formalities were not only practically disregarded in the commencement and conduct of these proceedings, but in their result I find myself convicted by less than two-thirds of the members present of an impeachable offense. . . .

By the Constitution 'the executive power is vested in a President of the United States'. Among the duties imposed upon him, and which he is sworn to perform, is that of 'taking care that the laws be faithfully executed'. Being thus made responsible for the entire action of the executive department, it was but reasonable that the power of appointing, overseeing, and controlling those who execute the laws—a power in its nature executive—should remain in his hands. It is therefore not only his right, but the Constitution makes it his duty, to 'nominate and, by and with the advice and consent of the Senate, appoint' all 'officers of the United States whose appointments are not in the Constitution otherwise provided for', with a proviso that the appointment of inferior officers may be vested in the President alone, in the courts of justice, or in the heads of Departments.

The executive power vested in the Senate is neither that of 'nominating' nor 'appointing'. It is merely a check upon the Executive power of appointment. If individuals are proposed for appointment by the President by them deemed incompetent or unworthy, they may withhold their consent and the appointment cannot be made. They check the action of the Executive, but cannot in relation to those very subjects act themselves nor direct him. Selections are still made by the President, and the negative given to the Senate, without diminishing his responsibility, furnishes an additional guaranty to the country that the subordinate executive as well as the judicial offices shall be filled with worthy and competent men.

The whole executive power being vested in the President, who is responsible for its exercise, it is a necessary consequence that he should have a right to employ agents of his own choice to aid him in the performance of his duties, and to discharge them when he is no longer willing to be responsible for their acts. In strict accordance with this principle, the power of removal, which, like that of appointment, is an original executive power, is left unchecked by the Constitution in relation to all executive officers, for whose conduct the President is responsible, while it is taken from him in relation to judicial officers, for whose acts he is not responsible. In the Government from which many of the fundamental principles of our system are derived the head of the executive department originally had power to appoint and remove at will all officers, executive and judicial. It was to take the judges out of this general power of removal, and thus make them independent of the Executive, that the tenure of their offices was changed to good behavior. Nor is it conceivable why they are placed in our Constitution upon a tenure different from that of all other officers appointed by the Executive unless it be for the same purpose. . . .

The resolution of the Senate as originally framed and as passed, if it refers to these acts, presupposes a right in that body to interfere with this exercise of Executive

power. If the principle be once admitted, it is not difficult to perceive where it may end. If by a mere denunciation like this resolution the President should ever be induced to act in a matter of official duty contrary to the honest convictions of his own mind in compliance with the wishes of the Senate, the constitutional independence of the executive department would be as effectually destroyed and its power as effectually transferred to the Senate as if that end had been accomplished by an amendment of the Constitution. But if the Senate have a right to interfere with the Executive powers, they have also the right to make that interference effective, and if the assertion of the power implied in the resolution be silently acquiesced in we may reasonably apprehend that it will be followed at some future day by an attempt at actual enforcement. The Senate may refuse, except on the condition that he will surrender his opinions to theirs and obey their will, to perform their own constitutional functions, to pass the necessary laws, to sanction appropriations proposed by the House of Representatives, and to confirm proper nominations made by the President. It has already been maintained (and it is not conceivable that the resolution of the Senate can be based on any other principle) that the Secretary of the Treasury is the officer of Congress and independent of the President; that the President has no right to control him, and consequently none to remove him. With the same propriety and on similar grounds may the Secretary of State, the Secretaries of War and the Navy, and the Postmaster-General each in succession be declared independent of the President, the subordinates of Congress, and removable only with the concurrence of the Senate. Followed to its consequences, this principle will be found effectually to destroy one co-ordinate department of the Government, to concentrate in the hands of the Senate the whole executive power, and to leave the President as powerless as he would be useless—the shadow of authority after the substance had departed. . . .



There are also some other circumstances connected with the discussion and passage of the resolution to which I feel it to be not only my right, but my duty, to refer. It appears by the Journal of the Senate that among the twenty-six Senators who voted for the resolution on its final passage, and who had supported it in debate in its original form, were one of the Senators from the State of Maine, the two Senators from New Jersey, and one of the Senators from Ohio. It also appears by the same Journal and by the files of the Senate that the legislatures of these States had severally expressed their opinions in respect to the Executive proceedings drawn in question before the Senate. . . .

It is thus seen that four Senators have declared by their votes that the President, in the late Executive proceedings in relation to the revenue, had been guilty of the unimpeachable offense of 'assuming upon himself authority and power not conferred by the Constitution and laws, but in derogation of both,' whilst the legislatures of their respective States had deliberately approved those very proceedings as consistent with the Constitution and demanded by the public good. If these four votes had been given in accordance with the sentiments of the legislatures, as above expressed, there would have been but twenty-two votes out of forty-six for censuring the President, and the unprecedented record of his conviction could not have been placed upon the Journal of the Senate.

In thus referring to the resolutions and instructions of the State legislatures I disclaim and repudiate all authority or design to interfere with the responsibility due from members of the Senate to their own consciences, their constituents, and their country. The facts now stated belong to the history of these proceedings, and are important to the just development of the principles and interests involved in them as well as to the proper vindication of the executive department, and with that view, and that view only, are they here made the topic of remark. . . .

It is due to the high trust with which I have been

charged, to those who may be called to succeed me in it, to the representatives of the people whose constitutional prerogative has been unlawfully assumed, to the people and to the States, and to the Constitution they have established that I should not permit its provisions to be broken down by such an attack on the executive department without at least some effort 'to preserve, protect, and defend' them. With this view, and for the reasons which have been stated, I do hereby *solemnly protest* against the aforementioned proceedings of the Senate as unauthorized by the Constitution, contrary to its spirit and to several of its express provisions, subversive of that distribution of the powers of government which it has ordained and established, destructive of the checks and safeguards by which those powers were intended on the one hand to be controlled and on the other to be protected, and calculated by their immediate and collateral effects, by their character and tendency, to concentrate in the hands of a body not directly amenable to the people a degree of influence and power dangerous to their liberties and fatal to the Constitution of their choice. . . .

ANDREW JACKSON

## 12. THE SOUTH CAROLINA ORDINANCE OF NULLIFICATION, 1832

[In 1828 Congress passed the famous 'tariff of abominations', a high protective tariff which favoured Northern industries against Southern plantations. South Carolina, the foremost cotton-growing State, had already a party which declared that, as the North was taxing the South for its own benefit, the State had the right to secede from the Union. John C. Calhoun, the Vice-President and statesman from South Carolina, wrote his 'Exposition of 1828', in which he upheld this right of Nullification, and the legislature of South Carolina formally approved the document. In 1832 Congress passed another tariff, which seemed to the South to be no improvement on the old. South Carolina called

a Convention, which on 24 November 1832 passed the Ordinance of Nullification. This forbade the federal officials to collect customs duties after 1 February 1832, and proclaimed the intention of the State to secede if any attempt at coercion were made.]

*An Ordinance to Nullify certain Acts of the Congress of the United States, purporting to be laws laying duties and imposts on the importation of foreign commodities.*

*Whereas* the Congress of the United States, by various Acts, purporting to be Acts laying duties and imposts on foreign imports, but in reality intended for the protection of domestic manufactures, and the giving of bounties to classes and individuals engaged in particular employments, at the expense and to the injury and oppression of other classes and individuals, and by wholly exempting from taxation certain foreign commodities, such as are not produced or manufactured in the United States, to afford a pretext for imposing higher and excessive duties on articles similar to those intended to be protected, hath exceeded its just powers under the Constitution, which confers on it no authority to afford such protection, and hath violated the true meaning and intent of the Constitution, which provides for equality in imposing the burthens of taxation upon the several States and portions of the Confederacy: *And whereas* the said Congress, exceeding its just power to impose taxes and collect revenue for the purpose of effecting and accomplishing the specific objects and purposes which the Constitution of the United States authorizes it to effect and accomplish, hath raised and collected unnecessary revenue for objects unauthorized by the Constitution:—

*We, therefore, the people of the State of South Carolina in Convention assembled, do declare and ordain, and it is hereby declared and ordained, That the several Acts and parts of Acts of the Congress of the United States, purporting to be laws for the imposing of duties and imposts on the importation of foreign commodities, and now having actual operation and effect in the*

United States, and, more especially, . . . [the Tariff Acts of 1828 and 1832] . . . , are unauthorized by the Constitution of the United States, and violate the true meaning and intent thereof, and are null, void, and no law, nor binding upon this State, its officers or citizens; and all promises, contracts, and obligations, made or entered into, or to be made or entered into, with purpose to secure the duties imposed by the said Acts, and all judicial proceedings which shall be hereafter had in affirmance thereof, are and shall be held utterly null and void.

*And it is further Ordained.* That it shall not be lawful for any of the constituted authorities, whether of this State or of the United States, to enforce the payment of duties imposed by the said Acts within the limits of this State; but it shall be the duty of the Legislature to adopt such measures and pass such Acts as may be necessary to give full effect to this Ordinance, and to prevent the enforcement and arrest the operation of the said Acts and parts of Acts of the Congress of the United States within the limits of this State, from and after the 1st day of February next. . . .

*And it is further Ordained.* That in no case of law or equity, decided in the courts of this State, wherein shall be drawn in question the authority of this ordinance, or the validity of such act or acts of the Legislature as may be passed for the purpose of giving effect thereto, or the validity of the aforesaid acts of Congress, imposing duties, shall any appeal be taken or allowed to the Supreme Court of the United States, nor shall any copy of the record be printed or allowed for that purpose; and if any such appeal shall be attempted to be taken, the courts of this State shall proceed to execute and enforce their judgments, according to the laws and usages of the State, without reference to such attempted appeal, and the person or persons attempting to take such appeal may be dealt with as for a contempt of the court.

*And it is further Ordained.* That all persons now holding any office of honor, profit, or trust, civil or military,

under this Statc, (members of the Legislature excepted), shall, within such time, and in such manner as the Legislature shall prescribe, take an oath well and truly to obey, execute, and enforce, this ordinance, and such act or acts of the Legislature as may be passed in pursuance thereof, according to the true intent and meaning of the same; and on the neglect or omission of any such person or persons so to do, his or their office or offices shall be forthwith vacated, and shall be filled up as if such person or persons were dead or had resigned; and no person hereafter elected to any office of honor, profit, or trust, civil or military, (members of the Legislature excepted), shall, until the Legislature shall otherwise provide and direct, enter on the execution of his office, or be in any respect competent to discharge the duties thereof, until he shall, in like manner, have taken a similar oath; and no juror shall be empannelled in any of the courts of this State, in any cause in which shall be in question this ordinance, or any act of the Legislature passed in pursuance thereof, unless he shall first, in addition to the usual oath, have taken an oath that he will well and truly obey, execute, and enforce this ordinance, and such act or acts of the Legislature as may be passed to carry the same into operation and effect, according to the true intent and meaning thereof.

And we, the People of South Carolina, to the end that it may be fully understood by the Government of the United States, and the people of the co-States, that we are determined to maintain this, our ordinance and declaration, at every hazard. *Do further Declare* that we will not submit to the application of force, on the part of the Federal Government, to reduce this State to obedience; but that we will consider the passage, by Congress, of any act or any act abolishing or closing the ports of this State, or any of them, or otherwise obstructing the free ingress or egress of vessels to and from the said ports, or any other act on the part of the Federal Government, to coerce the State, shut up her ports, destroy or harass her commerce, or to enforce the

acts hereby declared to be null and void, otherwise than through the civil tribunals of the country, as inconsistent with the longer continuance of South Carolina in the Union; and that the people of this State will thenceforth hold themselves absolved from all further obligation to maintain or preserve their political connexion with the people of the other States, and will forthwith proceed to organize a separate Government, and do all other acts and things which sovereign and independent States may of right to do.

### 13. JACKSON'S PROCLAMATION TO THE PEOPLE OF SOUTH CAROLINA, 1832

[President Jackson answered the Ordinance of Nullification by preparations to enforce the tariff in South Carolina. On 10 December 1832 he issued his proclamation to the people of South Carolina denouncing the doctrine of Nullification. In the end a compromise was reached. South Carolina suspended the Ordinance and, although an Act was passed authorizing the President to employ force to collect the customs duties, at the same time the tariff was substantially reduced. The Ordinance was then repealed by a South Carolina Convention.

Victory, however, lay with South Carolina, which had proved that by the threat of Secession the policy of Congress could be changed. For the next twenty-five years the opponents of high tariffs were in control of the Government.]

... And whereas the said ordinance prescribes to the people of South Carolina a course of conduct in direct violation of their duty as citizens of the United States, contrary to the laws of their country, subversive of its Constitution, and having for its object the destruction of the Union—

To preserve this bond of our political existence from destruction, to maintain inviolate this state of national honor and prosperity, and to justify the confidence my fellow-citizens have reposed in me, I, Andrew Jackson,

President of the United States, have thought proper to issue this my proclamation, stating my views of the Constitution and laws applicable to the measures adopted by the convention of South Carolina and to the reasons they have put forth to sustain them, declaring the course which duty will require me to pursue, and, appealing to the understanding and patriotism of the people, warn them of the consequences that must inevitably result from an observance of the dictates of the convention. . . .

The ordinance is founded, not on the indefeasible right of resisting Acts which are plainly unconstitutional and too oppressive to be endured, but on the strange position that any one State may not only declare an Act of Congress void, but prohibit its execution; that they may do this consistently with the Constitution; that the true construction of that instrument permits a State to retain its place in the Union and yet be bound by no other of its laws than those it may choose to consider as constitutional. It is true, they add, that to justify this abrogation of a law it must be palpably contrary to the Constitution; but it is evident that to give the right of resisting laws of that description, coupled with the uncontrolled right to decide what laws deserve that character, is to give the power of resisting all laws; for as by the theory there is no appeal, the reasons alleged by the State, good or bad, must prevail. If it should be said that public opinion is a sufficient check against the abuse of this power, it may be asked why it is not deemed a sufficient guard against the passage of an unconstitutional Act by Congress? There is, however, a restraint in this last case which makes the assumed power of a State more indefensible, and which does not exist in the other. There are two appeals from an unconstitutional Act passed by Congress—one to the judiciary, the other to the people and the States. There is no appeal from the State decision in theory, and the practical illustration shows that the courts are closed against an application to review it, both judges and jurors being sworn to decide in its

favor. But reasoning on this subject is superfluous when our social compact, in express terms, declares that the laws of the United States, its Constitution, and treaties made under it are the supreme law of the land, and, for greater caution, adds 'that the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding'. And it may be asserted without fear of refutation that no federative government could exist without a similar provision. Look for a moment to the consequence. If South Carolina considers the revenue laws unconstitutional and has a right to prevent their execution in the port of Charleston, there would be a clear constitutional objection to their collection in every other port; and no revenue could be collected anywhere, for all imposts must be equal. It is no answer to repeat that an unconstitutional law is no law so long as the question of its legality is to be decided by the State itself, for every law operating injuriously upon any local interest will be perhaps thought, and certainly represented, as unconstitutional. and, as has been shown, there is no appeal. . . .

If the doctrine of a State veto upon the laws of the Union carries with it internal evidence of its impracticable absurdity, our constitutional history will also afford abundant proof that it would have been repudiated with indignation had it been proposed to form a feature in our Government.

Our present Constitution was formed . . . in vain if this fatal doctrine prevails. It was formed for important objects that are announced in the preamble, made in the name and by the authority of the people of the United States, whose delegates framed and whose conventions approved it. The most important among these objects—that which is placed first in rank, on which all the others rest—is '*to form a more perfect union*'. Now, is it possible that even if there were no express provision giving supremacy to the Constitution and laws of the United States over those of the States, can it be conceived that an instrument made for the



purpose of '*forming a more perfect union*' than that of the Confederation could be so constructed by the assembled wisdom of our country as to substitute for that Confederation a form of government dependent for its existence on the local interest, the party spirit, of a State, or of a prevailing faction in a State? Every man of plain, unsophisticated understanding who hears the question will give such an answer as will preserve the Union. Metaphysical subtlety, in pursuit of an impracticable theory, could alone have devised one that is calculated to destroy it.

I consider, then, the power to annul a law of the United States, assumed by one State, *incompatible with the existence of the Union, contradicted expressly by the letter of the Constitution, unauthorized by its spirit, inconsistent with every principle on which it was founded, and destructive of the great object for which it was formed.*

After this general view of the leading principle, we must examine the particular application of it which is made in the ordinance.

The preamble rests its justification on these grounds: It assumes as a fact that the obnoxious laws, although they purport to be laws for raising revenue, were in reality intended for the protection of manufactures, which purpose it asserts to be unconstitutional; that the operation of these laws is unequal; that the amount raised by them is greater than is required by the wants of the Government; and, finally, that the proceeds are to be applied to objects unauthorized by the Constitution. These are the only causes alleged to justify an open opposition to the laws of the country and a threat of seceding from the Union if any attempt should be made to enforce them. The first virtually acknowledges that the law in question was passed under a power expressly given by the Constitution to lay and collect imposts; but its constitutionality is drawn in question from the *motives* of those who passed it. However apparent this purpose may be in the present case, nothing can be more dangerous than to admit the position that an unconstitutional purpose entertained

by the members who assent to a law enacted under a constitutional power shall make that law void. For how is that purpose to be ascertained? Who is to make the scrutiny? How often may bad purposes be falsely imputed, in how many cases are they concealed by false professions, in how many is no declaration of motive made? Admit this doctrine, and you give to the States an uncontrolled right to decide, and every law may be annulled under this pretext. If, therefore, the absurd and dangerous doctrine should be admitted that a State may annul an unconstitutional law, or one that it deems such, it will not apply to the present case.

The next objection is that the laws in question operate unequally. This objection may be made with truth to every law that has been or can be passed. The wisdom of man never yet contrived a system of taxation that would operate with perfect equality. If the unequal operation of a law makes it unconstitutional, and if all laws of that description may be abrogated by any State for that cause, then, indeed, is the Federal Constitution unworthy of the slightest effort for its preservation. . . . Nor did the States, when they severally ratified it, do so under the impression that a veto on the laws of the United States was reserved to them or that they could exercise it by implication. Search the debates in all their conventions, examine the speeches of the most zealous opposers of federal authority, look at the amendments that were proposed; they are all silent—not a syllable uttered, not a vote given, not a motion made to correct the explicit supremacy given to the laws of the Union over those of the States, or to show that implication, as is now contended, could defeat it. No; we have not erred. The Constitution is still the object of our reverence, the bond of our Union, our defense in danger, the source of our prosperity in peace. It shall descend, as we have received it, uncorrupted by sophistical construction, to our posterity; and the sacrifices of local interest, of State prejudices, of personal animosities, that were made to bring it into existence, will again be patriotically offered for its support.

The two remaining objections made by the ordinance to these laws are that the sums intended to be raised by them are greater than are required and that the proceeds will be unconstitutionally employed. . . .

The ordinance, with the same knowledge of the future that characterizes a former objection, tells you that the proceeds of the tax will be unconstitutionally applied. If this could be ascertained with certainty, the objection would with more propriety be reserved for the law so applying the proceeds, but surely cannot be urged against the laws levying the duty.

These are the allegations contained in the ordinance. Examine them seriously, my fellow-citizens; judge for yourselves. I appeal to you to determine whether they are so clear, so convincing, as to leave no doubt of their correctness; and even if you should come to this conclusion, how far they justify the reckless, destructive course which you are directed to pursue. Review these objections and the conclusions drawn from them once more. What are they? Every law, then, for raising revenue, according to the South Carolina ordinance, may be rightfully annulled, unless it be so framed as no law ever will or can be framed. Congress have a right to pass laws for raising revenue and each State have a right to oppose their execution—two rights directly opposed to each other; and yet is this absurdity supposed to be contained in an instrument drawn for the express purpose of avoiding collisions between the States and the General Government by an assembly of the most enlightened statesmen and purest patriots ever embodied for a similar purpose.

In vain have these sages declared that Congress shall have power to lay and collect taxes, duties, imposts, and excises; in vain have they provided that they shall have power to pass laws which shall be necessary and proper to carry those powers into execution, that those laws and that Constitution shall be the 'supreme law of the land, and that the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding'; . . . if a

bare majority of the voters in any one State may, on a real or supposed knowledge of the intent with which a law has been passed, declare themselves free from its operation; . . .

The Constitution declares that the judicial powers of the United States extend to cases arising under the laws of the United States, and that such laws, the Constitution, and treaties shall be paramount to the State constitutions and laws. The judiciary act prescribes the mode by which the case may be brought before a court of the United States by appeal when a State tribunal shall decide against this provision of the Constitution. The ordinance declares there shall be no appeal—makes the State law paramount to the Constitution and laws of the United States, forces judges and jurors to swear that they will disregard their provisions, and even makes it penal in a suitor to attempt relief by appeal. It further declares that it shall not be lawful for the authorities of the United States or of that State to enforce the payment of duties imposed by the revenue laws within its limits.

Here is a law of the United States, not even pretended to be unconstitutional, repealed by the authority of a small majority of the voters of a single State. Here is a provision of the Constitution which is solemnly abrogated by the same authority.

On such expositions and reasonings the ordinance grounds not only an assertion of the right to annul the laws of which it complains, but to enforce it by a threat of seceding from the Union if any attempt is made to execute them.

This right to secede is deduced from the nature of the Constitution, which, they say, is a compact between sovereign States who have preserved their whole sovereignty and therefore are subject to no superior; that because they made the compact they can break it when in their opinion it has been departed from by the other States. Fallacious as this course of reasoning is, it enlists State pride and finds advocates in the honest prejudices of those who have not studied the nature of

our Government sufficiently to see the radical error on which it rests. . . .

The Constitution of the United States, then, forms a *government*, not a league; and whether it be formed by compact between the States or in any other manner, its character is the same. It is a Government in which all the people are represented, which operates directly on the people individually, not upon the States; they retained all the power they did not grant. But each State, having expressly parted with so many powers as to constitute, jointly with the other States, a single nation, cannot, from that period, possess any right to secede, because such secession does not break a league, but destroys the unity of a nation; and any injury to that unity is not only a breach which would result from the contravention of a compact, but it is an offense against the whole Union. To say that any State may at pleasure secede from the Union is to say that the United States are not a nation, because it would be a solecism to contend that any part of a nation might dissolve its connection with the other parts, to their injury or ruin, without committing any offense. Secession, like any other revolutionary act, may be morally justified by the extremity of oppression; but to call it a constitutional right is confounding the meaning of terms, and can only be done through gross error or to deceive those who are willing to assert a right, but would pause before they made a revolution or incur the penalties consequent on a failure.

Because the Union was formed by a compact, it is said the parties to that compact may, when they feel themselves aggrieved, depart from it; but it is precisely because it is a compact that they cannot. A compact is an agreement or binding obligation. It may by its terms have a sanction or penalty for its breach, or it may not. If it contains no sanction, it may be broken with no other consequence than moral guilt; if it have a sanction, then the breach incurs the designated or implied penalty. A league between independent nations generally has no sanction other than a moral

one; or if it should contain a penalty, as there is no common superior it cannot be enforced. A government, on the contrary, always has a sanction, express or implied; and in our case it is both necessarily implied and expressly given. An attempt, by force of arms, to destroy a government is an offense, by whatever means the constitutional compact may have been formed; and such government has the right by the law of self-defense to pass acts for punishing the offender, unless that right is modified, restrained, or resumed by the constitutional act. In our system, although it is modified in the case of treason, yet authority is expressly given to pass all laws necessary to carry its powers into effect, and under this grant provision has been made for punishing acts which obstruct the due administration of the laws.

It would seem superfluous to add anything to show the nature of that union which connects us, but as erroneous opinions on this subject are the foundation of doctrines the most destructive to our peace, I must give some further development to my views on this subject. . . .

The States severally have not retained their entire sovereignty. It has been shown that in becoming parts of a nation, not members of a league, they surrendered many of their essential parts of sovereignty. The right to make treaties, declare war, levy taxes, exercise exclusive judicial and legislative powers, were all of them functions of sovereign power. The States, then, for all these important purposes were no longer sovereign. . . .

This, then, is the position in which we stand: A small majority of the citizens of one State in the Union have elected delegates to a State convention; that convention has ordained that all the revenue laws of the United States must be repealed, or that they are no longer a member of the Union. The governor of that State has recommended to the legislature the raising of an army to carry the secession into effect, and that he may be empowered to give clearances to vessels in

the name of the State. No act of violent opposition to the laws has yet been committed, but such a state of things is hourly apprehended. And it is the intent of this instrument to *proclaim*, not only that the duty imposed on me by the Constitution 'to take care that the laws be faithfully executed' shall be performed to the extent of the powers already vested in me by law, or of such others as the wisdom of Congress shall devise and intrust to me for that purpose, but to warn the citizens of South Carolina who have been deluded into an opposition to the laws of the danger they will incur by obedience to the illegal and disorganizing ordinance of the convention; to exhort those who have refused to support it to persevere in their determination to uphold the Constitution and laws of their country; and to point out to all the perilous situation into which the good people of that State have been led, and that the course they are urged to pursue is one of ruin and disgrace to the very State whose rights they affect to support. . . .

If your leaders could succeed in establishing a separation, what would be your situation? Are you united at home? Are you free from the apprehension of civil discord, with all its fearful consequences? Do our neighboring republics, every day suffering some new revolution or contending with some new insurrection, do they excite your envy? But the dictates of a high duty oblige me solemnly to announce that you cannot succeed. The laws of the United States must be executed. I have no discretionary power on the subject; my duty is emphatically pronounced in the Constitution. Those who told you that you might peaceably prevent their execution deceived you; they could not have been deceived themselves. They know that a forcible opposition could alone prevent the execution of the laws, and they know that such opposition must be repelled. Their object is disunion. But be not deceived by names. Disunion by armed force is *treason*. Are you really ready to incur its guilt? If you are, on the heads of the instigators of the act be the dreadful consequences; on their heads be the

dishonor, but on yours may fall the punishment. On your unhappy State will inevitably fall all the evils of the conflict you force upon the Government of your country. It cannot accede to the mad project of disunion, of which you would be the first victims. Its First Magistrate cannot, if he would, avoid the performance of his duty. The consequence must be fearful for you, distressing to your fellow-citizens here and to the friends of good government throughout the world. Its enemies have beheld our prosperity with a vexation they could not conceal; it was a standing refutation of their slavish doctrines, and they will point to our discord with the triumph of malignant joy. It is yet in your power to disappoint them. . . .

Fellow-citizens of the United States, the threat of unhallowed disunion, the names of those once respected by whom it is uttered, the array of military force to support it, denote the approach of a crisis in our affairs on which the continuance of our unexampled prosperity, our political existence, and perhaps that of all free governments may depend. The conjuncture demanded a free, a full, and explicit enunciation, not only of my intentions, but of my principles of action; and as the claim was asserted of a right by a State to annul the laws of the Union, and even to secede from it at pleasure, a frank exposition of my opinions in relation to the origin and form of our Government and the construction I give to the instrument by which it was created seemed to be proper. Having the fullest confidence in the justness of the legal and constitutional opinion of my duties which has been expressed. I rely with equal confidence on your undivided support in my determination to execute the laws, to preserve the Union by all constitutional means, to arrest, if possible, by moderate and firm measures the necessity of a recourse to force; and if it be the will of Heaven that the recurrence of its primeval curse on man for the shedding of a brother's blood should fall upon our land, that it be not called down by any offensive act on the part of the United States.



Fellow-citizens, the momentous case is before you. On your undivided support of your Government depends the decision of the great question it involves—whether your sacred Union will be preserved and the blessing it secures to us as one people shall be perpetuated. No one can doubt that the unanimity with which that decision will be expressed will be such as to inspire new confidence in republican institutions, and that the prudence, the wisdom, and the courage which it will bring to their defense will transmit them unimpaired and invigorated to our children.

May the Great Ruler of Nations grant that the signal blessings with which He has favored ours may not, by the madness of party or personal ambition, be disregarded and lost; and may His wise providence bring those who have produced this crisis to see the folly before they feel the misery of civil strife, and inspire a returning veneration for that Union which, if we may dare to penetrate His designs, He has chosen as the only means of attaining the high destinies to which we may reasonably aspire.

ANDREW JACKSON.

#### 14. WHITTIER'S VOICES OF FREEDOM

[John Greenleaf Whittier (1819-92), the son of a New England farmer, came as a young man under the influence of Garrison, the Abolitionist leader. His poems express the sincere hatred of slavery felt in the Northern States. The picture of the aristocracy of the South as a race of slave-hunters, the assumption that all the planters treated their slaves brutally, infuriated the South as did the rest of the Abolitionist propaganda.]

##### (a) *The Hunters of Men*

Have ye heard of our hunting, o'er mountain and  
glen,  
Through cane-brake and forest, — the hunting of  
men?

The lords of our land to this hunting have gone,  
As the fox-hunter follows the sound of the horn;  
Hark! the cheer and the hallo! the crack of the  
    whip,  
And the yell of the hound as he fastens his grip!  
All blithe are our hunters, and noble their match,  
Though hundreds are caught, there are millions to  
    catch.

So speed to their hunting, o'er mountain and glen,  
Through cane-brake and forest, — the hunting of  
    men!

Gay luck to our hunters! how nobly they ride  
In the glow of their zeal, and the strength of their  
    pride!

The priest with his cassock flung back on the wind,  
Just screening the politic statesman behind;  
The saint and the sinner, with cursing and prayer,  
The drunk and the sober, ride merrily there.  
And woman, kind woman, wife, widow, and maid,  
For the good of the hunted, is lending her aid:  
Her foot's in the stirrup, her hand on the rein,  
How blithely she rides to the hunting of men!

Oh, goodly and grand is our hunting to see,  
In this 'land of the brave and this home of the free'.  
Priest, warrior, and statesman, from Georgia to Maine,  
All mounting the saddle, all grasping the rein;  
Right merrily hunting the black man, whose sin  
Is the curl of his hair and the hue of his skin!  
Woe, now, to the hunted who turns him at bay!  
Will our hunters be turned from their purpose and  
    prey?

Will their hearts fail within them? their nerves tremble,  
    when

All roughly they ride to the hunting of men?

Ho! alms for our hunters! all weary and faint,  
Wax the curse of the sinner and prayer of the saint.  
The horn is wound faintly, the echoes are still,  
Over cane-brake and river, and forest and hill.

Haste, alms for our hunters! the hunted once more  
Have turned from their flight with their backs to the  
shore:

What right have they here in the home of the white,  
Shadowed o'er by our banner of Freedom and Right?  
Ho! alms for the hunters! or never again  
Will they ride in their pomp to the hunting of men!

Alms, alms for our hunters! why will ye delay,  
When their pride and their glory are melting away?  
The parson has turned; for, on charge of his own,  
Who goeth a warfare, or hunting, alone?  
The politic statesman looks back with a sigh,  
There is doubt in his heart, there is fear in his eye.  
Oh, haste, lest that doubting and fear shall prevail,  
And the head of his steed take the place of the tail.  
Oh, haste, ere he leave us! for who will ride then,  
For pleasure or gain, to the hunting of men?

(b) *The Farewell*

*of a Virginia slave mother to her daughters sold into  
Southern bondage*

Gone, gone,—sold and gone,  
To the rice-swamp dank and lone.  
Where the slave-whip ceaseless swings,  
Where the noisome insect stings,  
Where the fever demon strews  
Poison with the falling dews,  
Where the sickly sunbeams glare  
Through the hot and misty air;  
Gone, gone,—sold and gone,  
To the rice-swamp dank and lone,  
From Virginia's hills and waters;  
Woe is me, my stolen daughters!

Gone, gone,—sold and gone,  
To the rice-swamp dank and lone.  
There no mother's eye is near them,  
There no mother's ear can hear them;

Never, when the torturing lash  
Seams their back with many a gash,  
Shall a mother's kindness bless them,  
Or a mother's arms caress them.

Gone, gone,—sold and gone,  
To the rice-swamp dank and lone,  
From Virginia's hills and waters;  
Woe is me, my stolen daughters!

Gone, gone,—sold and gone,  
To the rice-swamp dank and lone.  
Oh, when weary, sad, and slow,  
From the fields at night they go,  
Faint with toil, and racked with pain,  
To their cheerless homes again,  
There no brother's voice shall greet them;  
There no father's welcome meet them.

Gone, gone,—sold and gone.  
To the rice-swamp dank and lone,  
From Virginia's hills and waters;  
Woe is me, my stolen daughters!

Gone, gone,—sold and gone,  
To the rice-swamp dank and lone.  
From the tree whose shadow lay  
On their childhood's place of play;  
From the cool spring where they drank;  
Rock, and hill, and rivulet bank;  
From the solemn house of prayer,  
And the holy counsels there;

Gone, gone,—sold and gone,  
To the rice-swamp dank and lone,  
From Virginia's hills and waters;  
Woe is me, my stolen daughters!

Gone, gone,—sold and gone,  
To the rice-swamp dank and lone;  
Toiling through the weary day,  
And at night the spoiler's prey.

Oh, that they had earlier died,  
 Sleeping calmly, side by side,  
 Where the tyrant's power is o'er,  
 And the fetter galls no more !

Gone, gone,—sold and gone,  
 To the rice-swamp dank and lone,  
 From Virginia's hills and waters ;  
 Woe is me, my stolen daughters !

Gone, gone,—sold and gone,  
 To the rice-swamp dank and lone.  
 By the holy love He beareth ;  
 By the bruised reed He spareth ;  
 Oh, may He, to whom alone  
 All their cruel wrongs are known,  
 Still their hope and refuge prove,  
 With a more than mother's love.

Gone, gone,—sold and gone,  
 To the rice-swamp dank and lone,  
 From Virginia's hills and waters ;  
 Woe is me, my stolen daughters !

## 15. ALEXIS DE TOCQUEVILLE:

### *DEMOCRACY IN AMERICA*

[In 1831 the French political writer Alexis de Tocqueville (1805-59) visited the United States to study the penitentiary system of the country. The fruits of his observations on American life and customs was a work, *De la Démocratie en Amérique*, published in 1835. A second part was published in 1840.

De Tocqueville's study is the most intelligent criticism ever written of American political and social institutions. Especially noteworthy are his observations on the relative importance of the Senate and the House of Representatives, the strength of political feeling, the influence of the Frontier, and the position of women in the country. His discussion on the rise of a new industrial oligarchy gives the key to much in the history of American development after the Civil War.

His views on American politics were doubtless affected by the fact that he was in the United States during the Presidential Election of 1832, a particularly violent struggle.]

(a) *A Presidential Election*

Nevertheless, the period of the election of a President in the United States may be considered as a crisis in the affairs of the nation. The influence which the President exerts on the course of events is, no doubt, feeble and indirect, but it extends over the whole nation; the choice of a president is a matter of no great concern to each individual citizen, but it concerns all the citizens. However trifling an interest may be, it assumes a character of real importance once it becomes general. Compared with a European monarch, the President has, no doubt, few opportunities of creating a body of supporters; still, the places at his disposal are numerous enough for several thousand electors to be directly or indirectly interested in his cause. Further, parties in the United States as elsewhere feel the need to rally round some individual in order to appeal more forcibly to the intelligence of the crowd; the names of the presidential candidates serve as symbols and in them their programmes are personified. Thus the parties are vitally interested in gaining the election, not so much in order that their principles may triumph with the aid of the successful candidate, as to show by his election that these principles have the support of the majority.

For a long time before the appointed day the election becomes the most important, if not the sole, subject of discussion. The factions redouble their energies; all the artificial passions which imagination can create in a happy and quiet country are brought into play for the occasion. The President in office, for his part, is absorbed by the cares of self-defence. He no longer governs in the interests of the State, but is concerned only with his own re-election; he prostrates himself before the majority; and often, instead of withstanding its passions, as it is his duty to do, he rather courts its caprices. As the election draws near, intrigues become

more active, popular excitement livelier and more general. The people take themselves to the several camps, each one under the name of its candidate. The whole nation falls into a condition of feverish excitement; the election is the daily theme of the public press, the subject of private conversation, the aim of all thought and actions, the one interest of the moment. It is true that, as soon as the choice is made, this excitement subsides; all is calm once more; and the river which has overflowed its banks returns peacefully once more to its normal course. But who can but be amazed at the storm which has been raised? (Part I, Chapter VIII).

*(b) The Senate and the House of Representatives*

On entering the House of Representatives at Washington, one is struck at once by the commonplace appearance of that great assembly. It is frequently impossible to see there a single eminent man. Almost all the members are obscure individuals, whose names mean nothing to the spectator. They are mostly small-town lawyers, traders, or even men from the lowest classes. In this country, in which education is almost universal, it is said that the representatives of the people often do not know how to write correctly.

A few yards away is the entrance to the Senate House, within whose narrow walls are to be found a large part of the most celebrated men of America. There is scarcely one man to be seen who is not a figure of recent renown. Here are eloquent advocates, distinguished generals, skilful magistrates, famous statesmen. The speeches which are heard in this assembly would invariably do honour to the greatest parliamentary debates of European nations.

What is the reason for this strange contrast? Why are the *élite* of the nation to be found in one assembly rather than the other? Why is the first assembly made up of men of such commonplace talents, while the second seems to have a monopoly of ability and intelligence? Both are chosen by the people; both are elected by

universal suffrage; and no voice has yet been raised in America to declare that the Senate is hostile to popular interests. What is the cause of this amazing difference? I can see only one explanation: the House of Representatives is chosen by direct election, the Senate is elected indirectly. The people as a whole elects the legislature of each State, and by the Federal Constitution these are transformed into electoral bodies who return the members of the Senate. The Senators do, then, represent, though indirectly, the popular suffrage, for the legislatures which nominate them are not aristocratic or privileged bodies exercising their powers of election in their own right. The legislatures rest on the popular will; they are usually elected annually and the people can always see to it that their intentions are respected by electing new members. But this transformation of the popular will through the medium of an elected assembly serves in some way to refine it and to clothe it in a nobler and finer form. Men elected in this way represent accurately the majority in the nation which governs them, but they represent only the more elevated ideas which are current in the community, the more generous feelings which inspire it, and not the petty passions which often disturb or the vices which degrade it (Part I, Chapter XIII).

### (c) *Political Activity*

On passing from a free country to one which is not in this condition, one is struck by a most extraordinary contrast: there all is bustle and activity; here all seems calm and motionless. In the former the only problems are those of improvement and progress; society in the latter seems only to be concerned to rest in peace and enjoy the advantages it has already won. And yet, the country which exerts itself so strenuously to gain happiness is usually richer and more prosperous than that which seems so contented with its lot. Comparing them, it is difficult to understand how so many new needs are daily felt in the former, while so few seem to occur in the latter.



If this remark applies to those free countries which have retained the institutions of monarchy and aristocracy, it is still more striking in the case of democratic republics. There it is not only one portion of the people who are concerned with the improvement of its social condition; the whole people is engaged in the task. It is not the needs and convenience of one class which are at stake, but those of all classes at the same time.

It is not impossible to imagine the unbounded freedom which the Americans enjoy, or their perfect equality. But the political activity which pervades the United States must be seen to be understood. No sooner have you set foot on the soil of America than you find yourself in the midst of a kind of tumult; a confused noise is heard on every side; thousands of voices beat on your ear at once, each clamouring for the satisfaction of some social wants. Everything around you is in motion: here, the people of one quarter are assembled to decide whether a church should be built; there they are engaged in electing a representative; further on the deputies of a township are hurrying to a town to discuss certain local improvements; in some other place the village labourers have left their ploughs to debate the project of a road or of a school. The citizens may assemble with the sole aim of declaring that they disapprove of the conduct of the government; while others are met to proclaim that the authorities are the fathers of their country. Others, again, come together to announce their views that drunkenness is the chief cause of the evils of the State and to bind themselves solemnly to give a practical example of temperance. . . .

It is difficult to exaggerate the importance of the place that politics plays in the life of a citizen of the United States. To participate in the government of his country and to discuss it are the chief business and the unique delight of an American. This may be seen in the most trifling habits of his life: even the women often attend public meetings and listen to political harangues as a relief from their household labours. Debating clubs serve them to some extent as a substitute for theatrical

entertainments. An American cannot talk, he debates; he does not converse, he gives you a dissertation. He talks to you as if he were addressing a public meeting, and, if he should happen to warm to the subject, he will say 'Gentlemen', to the person with whom he is conversing.

In many countries people show some repugnance to avail themselves of their political rights; they would seem to set too high a value on their time to spend it on the interests of the community, and they prefer to retire within the limits of their own egotism, enclosed by four square walls and a hedge. But if an American were condemned to concern himself only with his own business, half the joy of life would be lost to him; he would feel a great emptiness in his existence and he would become completely wretched. I am quite certain that, if despotism were ever established in America, it would find it more difficult to overcome the habits which freedom has engendered than to conquer the love of liberty itself (Part I, Chapter XIV).

#### *(d) The Tyranny of the Majority*

I know of no country in which, on the whole, there is to be found less independence of thought or true freedom of discussion than in America. In the constitutional states of Europe every kind of religious or political theory can be freely advocated and can make its own way; for there is no country in Europe so subdued under a single authority that the man who supports the cause of truth can find none to support him in his independence. If he has the misfortune to live under an absolute government, the people are often on his side; if he lives in a free country he can find shelter under the authority of the monarch. The aristocratic part of society supports him in democratic countries, and the democratic in others. But in a democracy organized like the United States, there is but one sole authority, one single element of strength and success, and nothing beside it.

In America, the majority rears formidable barriers round freedom of thought. Within these limits, the

author is free, but woe to him who dares to step beyond them. It is not that he has to fear an *auto-da-fé*; but he is tormented by slights of all kinds and continual persecution. A political career is closed to him; he has offended the only power which can open it to him. He is refused every reward, even that of celebrity. Before he published his opinions he may have thought he had supporters; as soon as he has expressed them, he seems to have none; for those who censure him are so overbearing towards him, and those who agree with him but lack the courage to speak so soon abandon him in silence, that in the end he gives in under the daily struggle and subsides into silence, as if he felt remorse for having spoken the truth (Part I, Chapter XV).

(e) *The Pioneers and the Frontiers*

It is difficult to depict the rapacity with which the American throws himself upon the immense booty which fortune offers him. In its pursuit he braves fearlessly the arrows of the Indian and the maladies of the forest; the silence of the woods does not affright him, the approach of wild beasts does not alarm him. A passion stronger than the love of life urges him on ceaselessly. Before him stretches a continent almost boundless, and it is as if he fears to lose his chance and hurries on, fearful of arriving too late. I have spoken of the emigration from the original States; but what am I to say of that from those founded more recently? It is not fifty years since the Territory of Ohio was founded; the greater part of its inhabitants were born elsewhere; its capital has only been built thirty years, and it is still covered by an immense expanse of uncultivated waste land; but already the population of Ohio is on the march towards the west. The greater part of those who move into the fertile plains of the Illinois are settlers from Ohio. These men have left their first home to improve their condition of life; they leave their second to improve it further: almost everywhere fortune awaits them, but not happiness. The longing for prosperity has become a fierce, restless

passion which grows as it is satisfied. They have already broken the ties which bound them to their native soil; and since then they have formed no new ones. For them, migration began as a necessity; to-day it has become a kind of game of chance which they play as much for the excitement as for the gains it may procure them.

Sometimes the progress of man is so rapid that the desert reappears behind him. The woods do no more than bend beneath his feet; and spring up again when he has passed. It is not uncommon, when travelling through the new western States, to come across abandoned dwellings in the midst of the woods; often the ruins of a log-cabin may be found standing in the most profound solitude, startling the traveller, as he crosses the remains of the clearing, witness at the same time to the power and the inconstancy of man. Over these abandoned fields, these ruins of a day, the primeval forest hastens to scatter a fresh vegetation; the wild beasts resume their sway; smiling Nature comes with green branches, and with flowers covers the traces of man and soon obliterates his passing tracks. . . .

The Americans never use the word 'peasant'; they do not use it because they have no idea what it means. The ignorance of more remote ages, the simplicity of the fields and the rusticity of the village have not been preserved among them, and they are unacquainted with the virtues, as with the vices, with the coarse habits as with the simple graces of the early days of civilization. On the further borders of the confederate States, on the confines of society and of the wilderness, there lives a population of bold adventurers who fearlessly penetrate the solitudes of America and search there for a new country, fleeing from the poverty that seemed about to engulf them in their native land. As soon as he reaches the spot which is to serve him as a retreat, the pioneer hastily fells a few trees and builds himself a log-cabin under the trees. Nothing can offer a more wretched appearance than these solitary dwellings. The traveller who approaches one as night falls sees afar off the

hearth-flame flickering through the walls; and at night, when the wind rises, he hears the roof of boughs shake beneath the forest trees. Who would not suppose that this poor hut was the home of rudeness and ignorance? But there is no comparison to be drawn between the pioneer and the place which gives him refuge. Around him all is primitive and wild, but he himself is the product of eighteen centuries of labour and experience. He wears the dress and speaks the language of cities; he knows the past, he is curious of the future, he argues about the present; he is a highly civilized being, who submits for a time to a life in the backwoods, and who penetrates the wilds of the New World with the Bible, an axe, and a file of newspapers (Part I, Chapter XVII).

*(f) Religion in the United States*

I showed in my earlier work how the American clergy stood aloof from secular affairs. This is the most striking, but not the only example of their discretion. In America religion forms a world of its own, in which the priest is sovereign, but which he is careful never to leave. Within its limits, he guides the minds of his people; beyond these he leaves them to themselves and abandons them to the independence and instability which belong to their nature and their times. I have never seen a country in which Christianity is clothed in fewer formulas, customs and rites than in the United States, or where it presents more distinct, more simple or more universal ideas to the human mind. Although the Christians of America are divided into a host of sects, they all see their religion in the same light. This applies to Roman Catholicism as well as to the other forms of faith. There are no Catholic priests who show less concern for small individual observances, for extraordinary or particular means of salvation, who pay more regard to the spirit and less to the letter of the law than those in the United States; nowhere else is that doctrine of the Church which forbids the adoration reserved only to God from being rendered to saints more plainly

taught or more faithfully followed. Yet the Roman Catholics of America are very submissive and very sincere.

Another observation is applicable to the clergy of all the denominations; the American clergy do not attempt to draw and to fix the eyes of man on the future life; they are ready to surrender a part of his heart to the cares of the present; they seem to look on the goods of this world as important, though secondary, aims. If they do not themselves take part in industry, they are concerned with its successful development and ready to applaud it. While they do not cease to point to the world to come as the supreme object of the hopes and fears of a believer, they certainly do not forbid him honestly to court prosperity in this. Far from attempting to show him that these two aims are incompatible, they endeavour rather to find at what point the interests of the two coincide.

All the American clergy recognize and respect the intellectual supremacy exercised by the majority. They never engage in any but necessary conflicts with it. They do not mingle in the strife of parties, but they readily adopt the general opinions of their country and their time, and they allow themselves to be influenced without resistance by the current of the feelings and ideas by which everything around them is carried along. They are prepared to reprove their contemporaries, but not to the point of parting company with them. Public opinion is therefore never hostile to them; rather it supports and protects them; and their beliefs derive their authority at the same time from the strength which is their own and also from that which they owe to being the opinions of the majority.

So it is that religion, by respecting all those democratic tendencies not directly contrary to itself and by making use of a good many of them, fights a successful battle with that spirit of individual independence which is its most dangerous antagonist (Part II, Book I, Chapter V).

(g) *Public Associations in Civil Life*

The political associations which are to be found in the United States form only a detail in the huge picture presented by all the associations of that country. Americans of all ages, conditions of life, and characters are always forming associations. They have not only commercial and industrial associations, in which all play a part, but also thousands of others of different kinds, religious, moral, serious, frivolous, the most extensive and the most restricted, enormous or minute. The Americans form associations to give entertainments, to found colleges, to erect hotels, to build churches, to diffuse literature, to send missionaries to the antipodes; it is in this way that they found hospitals, prisons, and schools. If they wish to give publicity to some truth or to lend to some theory the support of a great example, they form an association. Wherever you would see directing some new enterprise in France the Government, or in England a noble lord, you may be sure that in the United States you will find an association.

I have met with several kinds of associations in America of which I confess that I had not previously had the least idea and I have often been astonished at the extraordinary skill with which the inhabitants of the United States succeed in securing a common aim for the exertions of a great many persons and in persuading them to pursue it voluntarily.

I have since travelled in England, from which country the Americans have brought some of their laws and many of their customs, and it seems to me that the English are very far from making so constant or so skilful a use of the principle of association.

The English often act singly in very great matters, while there is scarcely any enterprise, however trivial, for which Americans are not ready to unite. It is clear that the former look on association as a powerful means to an end; but the latter seem to think of it as the only means they have of acting at all (Part II, Book II, Chapter V).

*(h) Industrial Aristocracy*

I have shown that Democracy is favourable to industrial development, and increases without limit the numbers of the manufacturing classes; we shall now see by what side road Industry may well in its turn lead men back towards Aristocracy.

It is generally agreed that when a worker is engaged every day upon the same detail, it is possible to produce the commodity with greater ease, promptitude and economy.

It is equally allowed that the larger the scale on which the industry is organized, and the more considerable its capital and credits, the more cheaply its products may be sold.

These truths had long before been discerned imperfectly, but it is in our time that they have been demonstrated. Already they have been applied to several industries of great importance, and in due course the small industries will also be governed by them.

I know of nothing in politics which deserves closer attention from the legislator than these two new axioms of industrial technique.

When a worker gives himself up unceasingly and exclusively to the manufacture of a single article, he ends by accomplishing his work with peculiar dexterity, but he loses, at the same time, the general faculty of applying his mind to the direction of his work. Each day he becomes more skilful and less industrious, and one can say of him, in fact, that the man becomes degraded proportionately as the workman improves.

What can be expected of a man who has spent twenty years of his life in making heads for pins?—and to what henceforth can be applied that mighty human intelligence, which has often shaken the world, except it be to investigate the best method of making pinheads!

When a worker has passed a considerable part of his life in this way, his thoughts are for ever set upon the daily object of his labours; his body has contracted certain fixed habits which it can never shake off. In a



word, he no longer belongs to himself, but to the calling he has chosen. It is in vain that laws and manners have been at pains to destroy all the barriers around such a man, and to open to him on all sides a thousand different roads to fortune; an industrial principle more powerful than manners and laws has bound him to his craft and often to a particular spot which he cannot leave. It has assigned to him a particular place in society, from which he cannot depart. In the midst of universal movement, it has rendered him immobile.

In proportion as the principle of the division of labour is more completely applied, the worker becomes weaker, more restricted, and more dependent. The art rises to greater heights, the artisan sinks lower. On the other hand, as it comes to be realized more clearly that the products of an industry are better and cheaper as the scale of the manufacture and the capital increases, so really wealthy and educated men come forward and take over industries which, until then, had been in the hands of ignorant and indifferent craftsmen. The magnitude of the efforts required and the immensity of the results to be secured attract them.

Thus, at the same time as industrial technique continually lowers the class of workers, it raises the class of employers.

While the worker concentrates his faculties more and more closely on the study of a particular detail, the employer surveys each day a more extensive prospect, and his outlook is enlarged as that of the worker is restricted. Soon the one will require nothing but physical strength without intelligence, while the other will need education and something like genius, to succeed. The latter resembles more and more the administrator of a great empire, the former becomes more and more like a brute beast.

The employer and the worker have then no point of similarity and they become more different every day. They are only connected with one another as two rings at the extremities of a long chain. Each fills a place that has been made for him and which he cannot leave.

One is in a continual, close and inevitable dependence on the other, and seems as much born to obey as is the other to command.

What is this but Aristocracy?

As the conditions of life in a nation become more and more equal, the demand for manufactured articles increases and becomes more widespread, and the cheapness which places these objects within the reach of those with slender means becomes a more important element in their successful distribution.

There are then every day men of greater opulence and education devoting to Industry their wealth and their knowledge, and seeking, by founding large businesses and by a strict division of labour, to satisfy the new demands which are made on all sides.

Thus, just in proportion as the mass of the nation turns towards Democracy, the particular class of industrialists becomes more aristocratic. Men show themselves to be more and more alike in one aspect, and more and more different in another, and inequality grows more common in the less numerous class, as it becomes rarer in the community as a whole.

And so, if one searches far enough, it seems to be clear that Aristocracy issues naturally from the womb of Democracy.

But this kind of Aristocracy bears no resemblance to those which have preceded it.

It will be observed at once that, as it is a phenomenon connected only with Industry, and then with only some industrial undertakings, it is an exception, a kind of portent in the social community.

The small aristocratic societies, which are formed by certain industries in the midst of the great democracy of our times, contain, like the great and aristocratic societies of former times, some men who are very wealthy and a multitude who are miserably wretched. The poor have few means of escaping from their conditions and of becoming rich, but the rich are continually becoming poor or giving up their businesses when they have realized their profits. In this way, the elements

which make up the poorer classes are pretty well constant; but those which compose the richer classes cannot be said to exist at all, for, although there are rich men, there is no real class of the wealthy. These rich men have no common feelings or aims, traditions or ambitions. They are individual members, but no community.

Not only are the rich without any real unity amongst themselves, but also there is no true link between the poor and the rich.

Their relative positions are in no sense permanent; at any moment they are brought together or separated by their several interests. The worker is, in a general way, dependent on the employer, but not on any particular employer. The two men meet in a factory, but do not know each other outside, and while they come into contact with one another at one point, they remain widely separated at all others. The employer asks of the worker nothing but his labour, and the worker asks of him nothing but his wages. The former is under no obligation to protect, or the latter to defend the other, and there is no permanent bond between them of custom or duty. The Aristocracy created by Business very rarely settles in the midst of the working population it controls; its aim is not to govern that population, but to make use of it.

An aristocracy so constituted can have no great hold on those whom it employs; and even though it is able to control them for a moment, they escape the next. It does not know how to will and it cannot act.

The territorial Aristocracy of former ages was bound by law, or held itself to be bound by custom, to come to the relief of its servants and to solace their distress. But the manufacturing Aristocracy of our days first impoverishes and brutalizes the men who serve it, and then, in times of crisis, abandons them to be supported by public charity. This is the natural consequence of what has been described. Between the worker and the employer there are frequent relations, but no real partnership.

I consider that, all in all, the industrial Aristocracy which we see growing up before our eyes is one of the harshest which have ever existed in the world, but at the same time one of the most restricted and least dangerous. Nevertheless, it is in this direction that the friends of Democracy should ceaselessly keep the most anxious watch; for, if ever a permanent state of inequality and the principle of Aristocracy penetrate again into the world, it may be predicted that it will be through this door that they will enter (Part II, Book II, Chapter XX).

(i) *American Women*

Amongst almost all the Protestant nations, young women are infinitely more the mistresses of their own actions than they are among Catholic peoples.

This independence is still more marked in Protestant countries, like England, which have preserved or acquired the right of self-government: the spirit of freedom then penetrates into the family through political habits and religious opinions.

In the United States the doctrines of Protestantism are combined with an unusually free constitution and a most democratic social system, and nowhere is the young woman allowed to look after herself so completely or at so early an age.

Long before an American girl reaches the age of marriage, her emancipation from maternal control begins; she has scarcely ceased to be a child before she thinks for herself, speaks with freedom, and acts on her own impulses. The great scene of the world is always open to her view. No attempt is made to hide it from her; rather it is every day disclosed to her more completely and she is taught to survey it with a firm and tranquil gaze. Thus the vices and dangers of society are early revealed to her; she sees them clearly, judges them without illusion, and faces them without fear; for she is full of confidence in her powers, and this confidence seems to be shared by all those about her.

The American girl, therefore, scarcely ever displays

that virginal freshness in the midst of youthful desires or that innocent and simple grace which usually attends the European woman as she passes from girlhood to youth. It is rare for an American woman of any age to show signs of the timidity or ignorance of childhood. Like the young woman of Europe, she seeks to please; but she knows exactly the price of pleasing. If she does not deliver herself over to evil, at least she knows it to exist; she has purity of manners rather than chastity of spirit. I have often been surprised and almost alarmed by the remarkable skill and the carefree audacity with which young women in America contrive to control their thoughts and language amid all the dangers of a stimulating conversation; a philosopher might have stumbled a hundred times in the narrow path which they trod without mishaps or difficulty. It is easy to see, in fact, that amidst the independence of early youth, the American girl is always mistress of herself; she indulges in all permitted pleasures without surrendering herself to any of them, and her reason never lets go the reins, though it often seems to hold them loosely. . . .

The greater part of the adventurers who migrate every year to the solitudes of the west belong, as I said in my earlier work, to the original Anglo-American race of the Northern States. Many of these men, who follow so boldly the pursuit of wealth, were once well enough off in their own country. They take their wives along with them and make them share with them the numberless dangers and privations which always attend the early days of such enterprises. I have often met, on the verge of the wilderness, young women who had been brought up amid all the comforts of the large towns of New England and have passed straight from the wealthy abode of their parents to an ill-built cabin in the heart of the forest. Fever, loneliness, boredom had not broken the resistance of their courage. Their features seemed changed and faded, but their gaze was firm. They seemed at the same time saddened and resolute. I do not doubt that these young American women had amassed in their earlier education that inner strength

which they then displayed. It is still the girl, in America, whom you can see in the married woman; her rôle is a new one, her habits have changed, but her character is the same.

16. CHARLES RIVER BRIDGE *v.*  
WARREN BRIDGE, 1837

[In 1785 the Legislature of Massachusetts had granted the right to build and maintain a toll bridge to the Charles River Bridge Company. The charter was not exclusive, and in 1828 the Warren Bridge Company was granted the right to build a bridge over the river very near the original structure. It was to be surrendered to the State when the cost of its construction had been recovered. The Charles River Bridge Company sued for an injunction against the competing bridge. The judgment by Chief Justice Taney, who had succeeded Marshall in 1837, was in favour of the Warren Bridge Company. It laid down the principles that grants by the legislatures were to be construed narrowly in favour of the State, and that any ambiguity should operate in favour of the public and against the corporation which had received the charter. From this opinion was largely derived the theory of the 'police power' of a State, extending its legislative control in the interests of public health and morals.

This judgement modified that of Chief Justice Marshall in the *Dartmouth College* case, marked a reaction from the attitude taken up by the Supreme Court in favour of the strict rights of corporations, and was a victory for Jacksonian democracy.]

TANEY, C.J. . . . Borrowing, as we have done, our system of jurisprudence from the English law . . . it would present a singular spectacle, if, while the courts in England are restraining, within the strictest limits, the spirit of monopoly, and exclusive privileges in nature of monopolies, and confining corporations to the privileges plainly given to them in their charter, the courts of this country should be found enlarging these privileges by implication; and construing a

statute more unfavorably to the public, and to the rights of the community, than would be done in a like case in an English court of justice. . . .

. But the object and end of all government is to promote the happiness and prosperity of the community by which it is established; and it can never be assumed, that the government intended to diminish its power of accomplishing the end for which it was created. And in a country like ours, free, active, and enterprising, continually advancing in numbers and wealth, new channels of communication are daily found necessary, both for travel and trade, and are essential to the comfort, convenience, and prosperity of the people. A State ought never to be presumed to surrender this power, because, like the taxing power, the whole community have an interest in preserving it undiminished. And when a corporation alleges, that a State has surrendered, for seventy years, its power of improvement and public accommodation, in a great and important line of travel, along which a vast number of its citizens must daily pass, the community have a right to insist, in the language of this court, above quoted, 'that its abandonment ought not to be presumed, in a case, in which the deliberate purpose of the State to abandon it does not appear'. The continued existence of a government would be of no great value if, by implications and presumptions, it was disarmed of the powers necessary to accomplish the ends of its creation, and the functions it was designed to perform, transferred to the hands of privileged corporations. The rule of construction announced by the court, was not confined to the taxing power, nor is it so limited, in the opinion delivered. On the contrary, it was distinctly placed on the ground, that the interests of the community were concerned in preserving, undiminished, the power then in question; and whenever any power of the State is said to be surrendered or diminished, whether it be the taxing power, or any other affecting the public interest, the same principle applies, and the rule of construction must be the same.

No one will question, that the interests of the great body of the people of the State would, in this instance, be affected by the surrender of this great line of travel to a single corporation, with the right to exact toll, and exclude competition, for seventy years. While the rights of private property are sacredly guarded, we must not forget, that the community also have rights, and that the happiness and well-being of every citizen depends on their faithful preservation.

Adopting the rule of construction above stated as the settled one, we proceed to apply it to the charter of 1785 to the proprietors of the Charles River bridge. This act of incorporation is in the usual form, and the privileges such as are commonly given to corporations of that kind. It confers on them the ordinary faculties of a corporation, for the purpose of building the bridge; and establishes certain rates of toll, which the company are authorized to take. This is the whole grant. There is no exclusive privilege given to them over the waters of Charles river, above or below their bridge; no right to erect another bridge themselves, nor to prevent other persons from erecting one, no engagement from the State, that another shall not be erected; and no undertaking not to sanction competition, nor to make improvements that may diminish the amount of its income. Upon all these subjects the charter is silent; and nothing is said in it about a line of travel, so much insisted on in the argument, in which they are to have exclusive privileges. No words are used from which an intention to grant any of these rights can be inferred. If the plaintiff is entitled to them, it must be implied, simply from the nature of the grant, and cannot be inferred from the words by which the grant is made. . . .

The inquiry then is, does the charter contain such a contract on the part of the State? Is there any such stipulation to be found in that instrument? It must be admitted on all hands, that there is none—no words that even relate to another bridge, or to the diminution of their tolls, or to the line of travel. If a contract on



that subject can be gathered from the charter, it must be by implication, and cannot be found in the words used. Can such an agreement be implied? The rule of construction before stated is an answer to the question. In charters of this description, no rights are taken from the public, or given to the corporation, beyond those which the words of the charter, by their natural and proper construction, purport to convey. There are no words which import such a contract as the plaintiffs in error contend for, and none can be implied; and the same answer must be given to them that was given by this court to the Providence Bank. The whole community are interested in this inquiry, and they have a right to require that the power of promoting their comfort and convenience, and of advancing the public prosperity, by providing safe, convenient, and cheap ways for the transportation of produce and the purposes of travel, shall not be construed to have been surrendered or diminished by the State, unless it shall appear by plain words that it was intended to be done. . . .

Indeed, the practice and usage of almost every State in the Union old enough to have commenced the work of internal improvement, is opposed to the doctrine contended for on the part of the plaintiffs in error. Turnpike roads have been made in succession, on the same line of travel; the later ones interfering materially with the profits of the first. These corporations have, in some instances, been utterly ruined by the introduction of newer and better modes of transportation and travelling. In some cases, railroads have rendered the turnpike roads on the same line of travel so entirely useless, that the franchise of the turnpike corporation is not worth preserving. Yet in none of these cases have the corporations supposed that their privileges were invaded, or any contract violated on the part of the State. . . .

And what would be the fruits of this doctrine of implied contracts on the part of the States, and of property in a line of travel by a corporation, if it should now be sanctioned by this court? To what results

would it lead us? If it is to be found in the charter to this bridge, the same process of reasoning must discover it, in the various acts which have been passed, within the last forty years, for turnpike companies. . . . If this court should establish the principles now contended for, what is to become of the numerous railroads established on the same line of travel with turnpike companies, and which have rendered the franchises of the turnpike corporations of no value? Let it once be understood that such charters carry with them these implied contracts, and give this unknown and undefined property in a line of travelling, and you will soon find the old turnpike corporations awakening from their sleep and calling upon this court to put down the improvements which have taken their place. The millions of property which have been invested in railroads and canals upon lines of travel which had been before occupied by turnpike corporations will be put in jeopardy. We shall be thrown back to the improvements of the last century, and obliged to stand still until the claims of the old turnpike corporations shall be satisfied, and they shall consent to permit these States to avail themselves of the lights of modern science, and to partake of the benefit of those improvements which are now adding to the wealth and prosperity, and the convenience and comfort, of every other part of the civilized world. . . .

Judgment affirmed.

### 17. J. C. CALHOUN'S SPEECH ON ABOLITIONIST PETITIONS, 1839

[In January 1839 J. C. Calhoun, the leading Southern statesman, deliberately raised in the Senate the whole question of the institution of slavery by proposing that Congress should refuse to consider petitions from Abolitionist Societies. In the course of his speech he proceeded to develop his defence of slavery. He claimed that this institution had solved in the Southern States the fundamental

problem of the relations of Capital and Labour, and contrasted the happy condition of the slaves with the misery of the workers in the factories of an industrial civilization.]

... However sound the great body of the non-slaveholding States are at present, in the course of a few years they will be succeeded by those who will have been taught to hate the people and institutions of nearly one-half of this Union, with a hatred more deadly than one hostile nation ever entertained towards another. It is easy to see the end. By the necessary course of events, if left to themselves, we must become, finally, two people. It is impossible under the deadly hatred which must spring up between the two great sections, if the present causes are permitted to operate unchecked, that we should continue under the same political system. The conflicting elements would burst the Union asunder, powerful as are the links which hold it together. Abolition and the Union cannot co-exist. As the friend of the Union I openly proclaim it—and the sooner it is known the better. The former may now be controlled, but in a short time it will be beyond the power of man to arrest the course of events. We of the South will not, cannot surrender our institutions. To maintain the existing relations between the two races, inhabiting that section of the Union, is indispensable to the peace and happiness of both. It cannot be subverted without drenching the country in blood, and extirpating one or the other of the races. Be it good or bad, it has grown up with our society and institutions, and is so interwoven with them, that to destroy it would be to destroy us as a people. But let me not be understood as admitting, even by implication, that the existing relations between the two races in the slaveholding States is an evil:—far otherwise; I hold it to be a good, as it has thus far proved itself to be to both, and will continue to prove so if not disturbed by the fell spirit of abolition. I appeal to facts. Never before has the black race of Central Africa, from the dawn of history to the present day, attained a condition

so civilized and so improved, not only physically, but morally and intellectually. It came among us in a low, degraded, and savage condition, and in the course of a few generations it has grown up under the fostering care of our institutions, reviled as they have been, to its present comparatively civilized condition. This, with the rapid increase of numbers, is conclusive proof of the general happiness of the race, in spite of all the exaggerated tales to the contrary.

In the meantime, the white or European race has not degenerated. It has kept pace with its brethren in other sections of the Union where slavery does not exist. It is odious to make comparison; but I appeal to all sides whether the South is not equal in virtue, intelligence, patriotism, courage, disinterestedness, and all the high qualities which adorn our nature. I ask whether we have not contributed our full share of talents and political wisdom in forming and sustaining this political fabric; and whether we have not constantly inclined most strongly to the side of liberty, and been the first to see and first to resist the encroachments of power. In one thing only are we inferior—the arts of gain; we acknowledge that we are less wealthy than the Northern section of this Union, but I trace this mainly to the fiscal action of this Government, which has extracted much from, and spent little among us. Had it been the reverse—if the exaction had been from the other section, and the expenditure with us, this point of superiority would not be against us now, as it was not at the formation of this Government.

But I take higher ground. I hold that in the present state of civilization, where two races of different origin, and distinguished by color, and other physical differences, as well as intellectual, are brought together, the relation now existing in the slaveholding States between the two, is, instead of an evil, a good—a positive good. I feel myself called upon to speak freely upon the subject where the honor and interests of those I represent are involved. I hold then, that there never has yet existed a wealthy and civilized society in which one portion

of the community did not, in point of fact, live on the labor of the other. Broad and general as is this assertion, it is fully borne out by history. This is not the proper occasion, but if it were, it would not be difficult to trace the various devices by which the wealth of all civilized communities has been so unequally divided, and to show by what means so small a share has been allotted to those by whose labor it was produced, and so large a share given to the non-producing classes. The devices are almost innumerable, from the brute force and gross superstition of ancient times, to the subtle and artful fiscal contrivances of modern. I might well challenge a comparison between them and the more direct, simple, and patriarchal mode by which the labor of the African race is, among us, commanded by the European. I may say with truth, that in few countries so much is left to the share of the laborer, and so little exacted from him, or where there is more kind attention paid to him in sickness or infirmities of age. Compare his condition with the tenants of the poor houses in the more civilized portions of Europe—look at the sick, and the old and infirm slave, on one hand, in the midst of his family and friends, under the kind superintending care of his master and mistress, and compare it with the forlorn and wretched condition of the pauper in the poor house. But I will not dwell on this aspect of the question; I turn to the political; and here I fearlessly assert that the existing relation between the two races in the South, against which these blind fanatics are waging war, forms the most solid and durable foundation on which to rear free and stable political institutions. It is useless to disguise the fact. There is and always has been in an advanced stage of wealth and civilization, a conflict between labor and capital. The condition of society in the South exempts us from the disorders and dangers resulting from this conflict; and which explains why it is that the political condition of the slaveholding States has been so much more stable and quiet than that of the North. The advantages of the former, in this respect, will become

more and more manifest if left undisturbed by interference from without, as the country advances in wealth and numbers. We have, in fact, but just entered that condition of society where the strength and durability of our political institutions are to be tested; and I venture nothing in predicting that the experience of the next generation will fully test how vastly more favorable our condition of society is to that of other sections for free and stable institutions, provided we are not disturbed by the interference of others, or shall have sufficient intelligence and spirit to resist promptly and successfully such interference. It rests with ourselves to meet and repel them. I look not for aid to this Government, or to the other States; not but there are kind feelings towards us on the part of the great body of the non-slaveholding States; but as kind as their feelings may be, we may rest assured that no political party in those States will risk their ascendancy for our safety. If we do not defend ourselves none will defend us; if we yield we will be more and more pressed as we recede; and if we submit we will be trampled under foot. Be assured that emancipation itself would not satisfy these fanatics:—that gained, the next step would be to raise the negroes to a social and political equality with the whites; and that being effected, we would soon find the present condition of the two races reversed. They and their northern allies would be the masters, and we the slaves; the condition of the white race in the British West India Islands, bad as it is, would be happiness to ours. There the mother country is interested in sustaining the supremacy of the European race. It is true that the authority of the former master is destroyed, but the African will there still be a slave, not to individuals but to the community,—forced to labor, not by the authority of the overseer, but by the bayonet of the soldiery and the rod of the civil magistrate. . . .

## 18. THE RESOLUTION FOR THE ANNEXATION OF TEXAS, 1845

[The United States had abandoned her claim to Texas as part of the Louisiana territory in 1819, and in 1821 the district became part of the independent United States of Mexico. American settlers began to migrate to Texas, which declared its independence in 1836, as the Republic of Texas, often called the Lone Star Republic after its flag. The Texans defeated the Mexicans, and in 1837 the United States recognized the new republic. Texas, however, demanded annexation to the United States. It was a slave State, and the acquisition of so large an expanse of slave territory was as distasteful to the North as it seemed desirable to the South. Under the Missouri Compromise only one territory, Florida, was left which would become a slave State, while the North could look forward to several additions to the number of free States.]

The Southern States began to fear that, under pressure from England, Texas might abolish slavery. In 1844 Calhoun attempted and failed to secure the passage of a treaty of annexation through the Senate. At the Presidential Election in the same year the question became an urgent political issue and the Democrats adopted a candidate, James K. Polk, with the platform of the 're-occupation of Oregon and the re-annexation of Texas'. Polk was successful by a narrow majority over his Whig opponent, Henry Clay, and Congress passed a joint resolution admitting Texas into the Union on 1 March 1845. The terms proposed were accepted by the Texans, and Texas was admitted as a State of the United States on 29 December 1845.]

*Resolved . . .*, That Congress doth consent that the territory properly included within, and rightfully belonging to the Republic of Texas, may be erected into a new State, to be called the State of Texas, with a republican form of government, to be adopted by the people of said republic, by deputies in convention assembled, with the consent of the existing government, in order that the same may be admitted as one of the States of this Union.

2. That the foregoing consent of Congress is given upon the following conditions, and with the following guarantees, to wit: *First*, Said State to be formed, subject to the adjustment by this government of all questions of boundary that may arise with other governments; and the constitution thereof, with the proper evidence of its adoption by the people of said Republic of Texas, shall be transmitted to the President of the United States, to be laid before Congress for its final action, on or before the first day of January, one thousand eight hundred and forty-six. *Second*, Said State, when admitted into the Union, after ceding to the United States, all public edifices, fortifications, barracks, ports and harbors, navy and navy-yards, docks, magazines, arms, armaments, and all other property and means pertaining to the public defence belonging to said Republic of Texas, shall retain all the public funds, debts, taxes, and dues of every kind, which may belong to or be due and owing said republic; and shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of the debts and liabilities of said Republic of Texas, and the residuc of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct; but in no event are said debts and liabilities to become a charge upon the Government of the United States. *Thrd*, New States, of convenient size, not exceeding four in number, in addition to said State of Texas, and having sufficient population, may hereafter, by the consent of said State, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the federal constitution. And such States as may be formed out of that portion of said territory lying south of thirty-six degrees thirty minutes north latitude, commonly known as the Missouri compromise line, shall be admitted into the Union with or without slavery, as the people of each State asking admission may desire. And in such State or States as shall be formed out of said territory north of said Missouri compromise line, slavery, or



involuntary servitude (except for crime), shall be prohibited.

3. That if the President of the United States shall in his judgment and discretion deem it most advisable, instead of proceeding to submit the foregoing resolution to the Republic of Texas, as an overture on the part of the United States for admission, to negotiate with that Republic; then,

*Be it resolved*, That a State, to be formed out of the present republic of Texas, with suitable extent and boundaries, and with two representatives in Congress, until the next apportionment of representation, shall be admitted into the Union, by virtue of this act, on an equal footing with the existing States, as soon as the terms and conditions of such admission, and the cession of the remaining Texian territory to the United States shall be agreed upon by the Governments of Texas and the United States: And that the sum of one hundred thousand dollars be, and the same is hereby, appropriated to defray the expenses of missions and negotiations, to agree upon the terms of said admission and cession, either by treaty to be submitted to the Senate, or by articles to be submitted to the two houses of Congress, as the President may direct.

## 19. POLK'S FIRST ANNUAL MESSAGE, 1845

[During 1845 the United States had annexed Texas and come near to war with Mexico, the territory of Oregon was disputed with Great Britain, and it was feared, with some reason, that that country might endeavour to gain possession of California. President Polk in his first annual message to Congress on 2 December 1845 applied the Monroe Doctrine to these problems. While his message did not add much to the original doctrine, it did a great deal to make it a fixed principle of American foreign policy.]

. . . The rapid extension of our settlements over our territories heretofore unoccupied, the addition of

new States to our Confederacy, the expansion of free principles, and our rising greatness as a nation are attracting the attention of the powers of Europe, and lately the doctrine has been broached in some of them of a 'balance of power' on this continent to check our advancement. The United States, sincerely desirous of preserving relations of good understanding with all nations, cannot in silence permit any European interference on the North American continent, and should any such interference be attempted will be ready to resist it at any and all hazards.

It is well known to the American people and to all nations that this Government has never interfered with the relations subsisting between other governments. We have never made ourselves parties to their wars or their alliances; we have not sought their territories by conquest; we have not mingled with parties in their domestic struggles; and believing our own form of government to be the best, we have never attempted to propagate it by intrigues, by diplomacy, or by force. We may claim on this continent a like exemption from European interference. The nations of America are equally sovereign and independent with those of Europe. They possess the same rights, independent of all foreign interposition, to make war, to conclude peace, and to regulate their internal affairs. The people of the United States cannot, therefore, view with indifference attempts of European powers to interfere with the independent action of the nations on this continent. The American system of government is entirely different from that of Europe. Jealousy among the different sovereigns of Europe, lest any one of them might become too powerful for the rest, has caused them anxiously to desire the establishment of what they term the 'balance of power'. It cannot be permitted to have any application on the North American continent, and especially to the United States. We must ever maintain the principle that the people of this continent alone have the right to decide their own destiny. Should any portion of them, constituting an

independent State, propose to unite themselves with our Confederacy, this will be a question for them and us to determine without any foreign interposition. We can never consent that European powers shall interfere to prevent such a union because it might disturb the 'balance of power' which they may desire to maintain upon this continent. Near a quarter of a century ago the principle was distinctly announced to the world, in the annual message of one of my predecessors, that—

The American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers.

This principle will apply with greatly increased force should any European power attempt to establish any new colony in North America. In the existing circumstances of the world the present is deemed a proper occasion to reiterate and reaffirm the principle avowed by Mr Monroe and to state my cordial concurrence in its wisdom and sound policy. The reassertion of this principle, especially in reference to North America, is at this day but the promulgation of a policy which no European power should cherish the disposition to resist. Existing rights of every European nation should be respected, but it is due alike to our safety and our interests that the efficient protection of our laws should be extended over our whole territorial limits, and that it should be distinctly announced to the world as our settled policy that no future European colony or dominion shall with our consent be planted or established on any part of the North American continent. . . .

## 20. THE BIGLOW PAPERS

[James Russell Lowell (1819-91) was a member of one of the leading Boston families and one of the chief figures in the New England literary movement of the eighteen forties and fifties. In 1848 he published *The Biglow Papers*, which

had appeared in the Press during 1846 and 1847. These satirical poems, written in the New England dialect, deal with the Mexican War and the crisis resulting from it, the details of which are dealt with under 'The Crisis of 1850' (No. 21).]

## (a)

(This poem was written at the time of the Mexican War. Many in the North considered that the United States had been dragged into the war to acquire new slave territory for the South.)

Thrash away; you'll hev to rattle  
On them kittle-drums o' yourn,—  
'Taint a knowin' kind o' cattle  
Thet is ketched with mouldy corn;  
Put in stiff, you fifer feller,  
Let folks see how spry you be,—  
Guess you'll toot till you are yellor  
'Fore you git ahold o' me!

Thet air flag's a lettler rotten,  
Hope it aint your Sunday's best;—  
Fact! it takes a sight o' cotton  
To stuff out a soger's chest:  
Sence we farmers hev to pay fer't,  
Ef you must wear humps like these,  
Sposin' you should try salt hay fer't,  
It would du ez slick ez grease.

'Twould n't suit them Southun fellers,  
They're a drefle graspin' set,  
We must ollers blow the bellers  
Wen they want their irons het;  
May be it's all right ez preachin',  
But my narves it kind o' grates,  
Wen I see the overreachin'  
O' them nigger-drivin' States.

### The Biglow Papers

Them thet rule us, them slave-traders,  
Haint they cut a thunderin' swarth  
(Helped by Yankee renegaders),  
Thru the vartu o' the North!  
We begin to think it's nater  
To take sarse an' not be riled;—  
Who'd expect to see a tater  
All on eend at bein' biled?

Ez fer war, I call it murder,—  
There you hev it plain an' flat;  
I don't want to go no further  
Than my Testyment fer that;  
God hez sed so plump an' fairly,  
It's ez long ez it is broad,  
An' you've gut to git up airly  
Ef you want to take in God.

'Taint your eppyletts an' feathers  
Make the thing a grain more right;  
'Taint afollerin' your bell-wethers  
Will excuse ye in His sight;  
Ef you take a sword an' dror it,  
An' go stick a feller thru,  
Guv'ment aint to answer for it,  
God'll send the bill to you.

Wut 's the use o' meetin'-goin'  
Every Sabbath, wet or dry,  
Ef it's right to go amowin'  
Feller-men like oats an' rye?  
I dunno but wut it 's pooty  
Trainin' round in bobtail coats,—  
But it's curus Christian dooty  
This 'ere cuttin' folks's throats.

They may talk o' Freedom's airy  
Tell they're pupple in the face,—  
It's a grand gret cemetary  
Fer the barthrights of our race;

They jest want this Californy  
 So's to lug new slave-states in  
 To abuse ye, an' to scorn ye,  
 An' to plunder ye like sin.

Aint it cute to see a Yankee  
 Take sech everlastin' pains,  
 All to git the Devil's thankee  
 Helpin' on 'em weld their chains?  
 Wy, it's jest ez clear ez figgers,  
 Clear ez one an' one make two,  
 Chaps thet make black slaves o' niggers  
 Want to make wite slaves o' you.

Tell ye jest the cend I've come to  
 Arter cipherin' plaguy smart,  
 An' it makes a handy sum, tu,  
 Any gump could larn by heart;  
 Laborin' man an' laborin' woman  
 Hev one glory an' one shame.  
 Ev'y thin' thet's done inhuman  
 Injers all on 'em the same.

'Taint by turnin' out to hack folks  
 You're agoin' to git your right,  
 Nor by lookin' down on black folks  
 Coz you're put upon by wite;  
 Slavery aint o'nary colour,  
 'Taint the hide thet makes it wus,  
 All it keers fer in a feller  
 'S jest to make him fill its pus.

Want to tackle *me* in, du ye?  
 I expect you'll hev to wait;  
 Wen cold lead puts daylight thru ye  
 You'll begin to kal'late;  
 S'pose the crows wun't fall to pickin'  
 All the carkiss from your bones,  
 Coz you helped to give a lickin'  
 To them poor half-Spanish drones?

## The Biglow Papers

Jest go home an' ask our Nancy  
 Wether I'd be sech a goose  
 Ez to jine ye,—guess you'd fancy  
 The etarnal bung wuz loose!  
 She wants me fer home consumption,  
 Let alone the hay's to mow,—  
 Ef you're arter folks o' gumption,  
 You've a darned long row to hoe.

Take them editors thet's crowin'  
 Like a cockerel three months old,  
 Don't ketch any on 'em goin',  
 Though they *be* so blasted bold;  
*Aint* they a prime lot o' fellers?  
 'Fore they think on't they will sprout  
 (Like a peach thet's got the yellers),  
 With the meanness bustin' out.

Wal, go 'long to help 'em stealin'  
 Bigger pens to cram with slaves,  
 Help the men thet's ollers dealin'  
 Insults on your fathers' graves;  
 Help the strong to grind the feeble,  
 Help the many agin the few,  
 Help the men thet call your people  
 Witewashed slaves an' peddlin' crew!

Massachusetts, God forgive her,  
 She's akneelin' with the rest,  
 She, thet ough' to ha' clung ferever  
 In her grand old eagle-nest;  
 She thet ough' to stand so fearless  
 Wile the wracks are round her hurled,  
 Holdin' up a beacon peerless  
 To the oppressed of all the world!

Ha'n't they sold your coloured seamen?  
 Ha'n't they made your env'ys wiz?  
 Wut'll make ye act like freemen?  
 Wut'll git your dander riz?

Come, I'll tell ye wut I 'm thinkin'  
Is our dooty in this fix,  
They'd ha' done 't ez quick ez winkin'  
In the days o' seventy-six.

Clang the bells in every steeple,  
Call all true men to disown  
The tradoochers of our people,  
The enslavers o' their own;  
Let our dear old Bay State proudly  
Put the trumpet to her mouth,  
Let her ring this messidge loudly  
In the ears of all the South:—

'I'll return ye good fer evil  
Much ez we frail mortils can,  
But I wun't go help the Devil  
Makin' man the cus o' man;  
Call me coward, call me traiter,  
Jest ez suits your mean idees,—  
Here I stand a tyrant-hater,  
An' the friend o' God an' Peace!'

Ef I'd *my* way I hed ruther  
We should go to work an' part,—  
They take one way, we take t'other,  
Guess it wouldn't break my heart;  
Man hed ough' to put asunder  
Them thet God has noways jined;  
An' I should n't gretly wonder  
Ef there's thousands o' my mind.

(b) *The Debate in the Sennit*

(This poem satirizes the Southern defence of slavery and the assumption of Southern statesmen that the secession of the Slave States would bring economic disaster to the North and soon bring it to heel.)



'Here we stan' on the Constitution, by thunder!

It's a fact o' wich ther's bushils o' proofs;  
Fer how could we trample on 't so, I wonder,  
Ef't worn't thet it's ollers under our hoofs?'

Sez John C. Calhoun, sez he;

'Human rights haint no more

Right to come on this floor,

No more'n the man in the moon,' sez he.

'The North haint no kind o' bisness with nothin',

An' you've no idee how much bother it saves;

We aint none riled by their frettin' an' frothin',

We 're *used* to layin' the string on our slaves.'

Sez John C. Calhoun, sez he;—

Sez Mister Foote,

'I should like to shoot

The holl gang, by the gret horn spoon!' sez he.

'Freedom's Keystone is Slavery, thet ther's no doubt on,

It's sutthin' thet's—wha' d'ye call it?—divine,—

An' the slaves thet we ollers *make* the most out on

Air them north o' Mason an' Dixon's line,'

Sez John C. Calhoun, sez he;—

'Fer all thet,' sez Mangum,

'T would be better to hang 'em,

An' so git red on 'em soon,' sez he.

'The mass ough' to labor an' we lay on soffies,

Thet's the reason I want to spread Freedom's aree;

It puts all the cunninest on us in office,

An' reelises our Maker's orig'nal idee,'

Sez John C. Calhoun, sez he;—

'Thet's ez plain,' sez Cass,

'Ez thet some one's an ass,

It's ez clear ez the sun is at noon,' sez he.

'Now don't go to say I'm the friend of oppression,

But keep all your spare breath fer coolin' your broth,

Fer I ollers hev strove (at least thet's my impression)

To make cussed free with the rights o' the North,'

Sez John C. Calhoun, sez he;—  
‘Yes,’ sez Davis o’ Miss.,  
‘The perfection o’ bliss  
Is in skinnin’ thet same old coon,’ sez he.

‘Slavery’s a thing thet depends on complexion,  
It’s God’s law thet fetters on black skins don’t chafe;  
Ef brains wuz to settle it (horrid reflection!)  
Wich of our onnable body’d be safe?’  
Sez John C. Calhoun, sez he;—  
Sez Mister Hannegan,  
Afore he began agin,  
‘Thet exception is quite oppertoorn,’ sez he.

‘Gen’le Cass, Sir, you needn’t be twitchin’ your collar,  
Your merit’s quite clear by the dut on your knees,  
At the North we don’t make no distinctions o’ color;  
You can all take a lick at our shocs wcn you please,’  
Sez John C. Calhoun, sez he;—  
Sez Mister Jarnagin,  
‘They wunt hev to larn agin,  
They all on ’em know the old toon,’ sez he.

‘The slavery question aint no ways bewilderin’.  
North an’ South hev one int’rest, it’s plain to a glance;  
No’thern men, like us patriarchs, don’t scil their childrin,  
But they *du* sell themselves, ef they git a good chance.’  
Sez John C. Calhoun, sez he;—  
Sez Atherton here,  
‘This is gittin’ severe,  
I wish I could dive like a loon,’ sez he.

‘It’ll break up the Union, this talk about freedom,  
An’ your fact’ry gals (soon ez we split) ’ll make head,  
An’ gittin’ some Miss chief or other to lead ’em,  
’ll go to work raisin’ promiscuous Ned,’  
Sez John C. Calhoun, sez he;—  
‘Yes, the North,’ sez Colquitt,  
‘Ef we Southerners all quit,  
Would go down like a busted balloon,’ sez he.

'Jest look wut is doin', wut annyky's brewin'  
 In the beautiful clime o' the olive an' vine,  
 All the wise aristoxys a tumblin' to ruin,  
 An' the sankylots drorin' an' drinkin' their wine,'  
 Sez John C. Calhoun, sez he;—  
 'Yes,' sez Johnson, 'in France  
 They're beginnin' to dance  
 Beelzebub's own rigadoon,' sez he.

'The South's safe enough, it don't feel a mite skeery,  
 Our slaves in their darkness an' dut air tu blest  
 Not to welcome with proud hallylугers the cry  
 Wen our eagle kicks yourn from the naytional nest,'  
 Sez John C. Calhoun, sez he;—  
 'O,' sez Westcott o' Florida,  
 'Wut treason is horrider  
 Then our priv'leges tryin' to proon?' sez he.

'It's 'eoz they're so happy, thet, wen crazy sarpints  
 Stick their nose in our bizness, we git so darned riled;  
 We think it's our dooty to give pooty sharp hints,  
 Thet the last crumb of Edin on airth sha'n't be spiled,'  
 Sez John C. Calhoun, sez he;—  
 'Ah,' sez Dixon H. Lewis,  
 'It perfectly true is  
 Thet slavery's airth's grettest boon,' sez he.

(c) *The Pious Editor's Creed*

I du believe in Freedom's cause,  
 Ez fur away ez Payris is;  
 I love to see her stiek her claws  
 In them infarnal Phayrisees;  
 It's wal enough agin a king  
 To dror resolves an' triggers,—  
 But libbaty's a kind o' thing  
 Thet don't agree with niggers.

I du believe the people want  
A tax on teas an' coffees,  
Thet nothin' aint extravygunt,—  
Purvidin' I'm in office;  
Fer I hev loved my country sence  
My eye-teeth filled their sockets,  
An' Uncle Sam I reverence,  
Partic'larly his pockets.

I du believe in *any* plan  
O' levyin' the taxes,  
Ez long ez, like a lumberman,  
I git jest wut I axes;  
I go free-trade thru thick an' thin,  
Because it kind o' rouses  
The folks to vote,—an' keeps us in  
Our quict custom-houses.

I du believe it's wise an' good  
To sen' out furrin missions,  
Thet is, on sartin understood  
An' orthydox conditions;—  
I mean nine thousan' dolls. per ann.,  
Nine thousan' more fer outfit,  
An' me to recommend a man  
The place 'ould jest about fit.

I du believe in special ways  
O' prayin' an' convartin';  
The bread zomes back in many days,  
An' buttered, tu, fer sartin;  
I mean in preyin' till one busts  
On wut the party chooses,  
An' in convartin' public trusts  
To very privit uses.

I du believe hard coin the stuff  
Fer 'lectioneers to spout on;  
The people's ollers soft enough  
To make hard money out on;

Dear Uncle Sam pervides fer his,  
 An' gives a good-sized junk to all,—  
 I don't care *how* hard money is,  
 Ez long ez mine's paid punctooal.

I du believe with all my soul  
 In the gret Press's freedom,  
 To pint the people to the goal  
 An' in the traces lead 'em;  
 Palsied the arm thet forges yokes  
 At my fat contracts squintin',  
 An' withered be the nose thet pokes  
 Inter the gov'ment printin'!

I du believe thet I should give  
 Wut's his'n unto Cæsar,  
 Fer it's by him I move an' live,  
 Frum him my bread an' cheese air;  
 I du believe thet all o' me  
 Doth bear his superscription,—  
 Will, conscience, honor, honesty,  
 An' things o' thet description.

I du believe in prayer an' praise  
 To him thet hez the grantin'  
 O' jobs,—in every thin' thet pays,  
 But most of all in CANTIN';  
 This doth my cup with nardies fill,  
 This lays all thought o' sin to rest,  
 I *don't* believe in princerple,  
 But O, I *du* in interest.

I du believe in bein' this  
 Or thet, ez it may happen  
 One way or t'other hendiest is  
 To ketch the people nappin';  
 It aint by princerples nor men  
 My preudunt course is steadied,—  
 I scent wich pays the best, an' then  
 Go into it baldheaded,

I du believe thet holdin' slaves  
Comes nat'ral to a Presidunt,  
Let 'lone the rowdcrow it saves  
To hev a wal-broke precedunt;  
Fer any office, small or gret,  
I couldn't ax with no face,  
Without I'd ben, thru dry an' wet,  
Th' unrizzest kind o' doughface.

I du believe wutever trash  
'll keep the people in blindness,—  
Thet we the Mexicuns can thrash  
Right inter brotherly kindness,  
Thet bombshells, grape, an' powder 'n' ball  
Air good-will's strongest magnets,  
Thet peace, to make it stick at all,  
Must be druv in with bagnets.

In short, I firmly du believe  
In Humbug generally,  
Fer it's a thing thet I perceive  
To hev a solid vally;  
This heth my faithful shepherd ben,  
In pasturs sweet heth led me,  
An' this'll keep the people green  
To feed ez they hev fed me.

## 21. THE CRISIS OF 1850

[By the Treaty of Guadalupe Hidalgo (2 February 1848) Mexico surrendered her claim to Texas, and ceded also the provinces of New Mexico and Upper California. Immediately a crisis developed over the settlement of the new territory.

In 1846, when a Bill had been before the House of Representatives for an appropriation of two million dollars to purchase territory from Mexico, David Wilmot of Pennsylvania had moved an amendment, known later as the Wilmot Proviso, to the effect that neither slavery nor involuntary

servitude should ever exist in the territory to be acquired. The proviso was rejected, but when Oregon was organized as a territory in 1848 slavery was prohibited. During 1848 and 1849 the discovery of gold in California flooded the district with immigrants who adopted a State constitution in September 1849 under which slavery was illegal.

Congress, when it met in December 1849, had to decide whether California should be admitted as a State and to organize the new districts won from Mexico. The representatives of the Northern States demanded the fulfilment of the Wilmot Proviso, those of the Southern, led by Calhoun, insisted that slavery should be legalized in all the Territories of the United States.

On 27 January 1850 Henry Clay brought forward a series of resolutions to serve as a compromise, which, when drafted in legal form, were to be known as Clay's Omnibus Bill. These provided for the admission of California as a State without slavery, the organization of two new territories, New Mexico and Utah, without deciding whether they should be slave or free when they applied in due course for admission as States of the Union, the prohibition of the domestic slave trade, but not slavery itself, in the District of Columbia, and the enactment of a strict law against fugitive slaves.

The resolutions led to a great debate in the Senate. Clay's speech was an ardent appeal for peace and a warning that secession would certainly mean war. Calhoun demanded the legalization of slavery in California and New Mexico, the abandonment by the North of the agitation against slavery, and the restoration of the South to her true position in the Federal Government by an amendment of the Constitution. Webster, in his last great speech, supported the compromise, and it was only through his influence that the North accepted the Fugitive Slave Law. Seward spoke for those in the North who rejected the Compromise, appealing from the Constitution to the Law of God. In September 1850 the necessary Bills were passed, admitting California to the Union, organizing New Mexico and Utah Territories, enacting the new Fugitive Slave Law, and prohibiting the slave trade in the District of Columbia.

The passing of the Bills marks a short lull in the struggle and at the same time the greatest figures in American politics passed from the stage. Calhoun died in March 1850, while the contest was at its height. Clay and Webster died in 1852. But in the North the Abolitionists were moved to fury by what seemed to them an abject surrender, as may be seen

in Whittier's poem, *Ichabod*, written against Webster, and the South had no real intention of withdrawing from its extreme demands.]

(a) *The Wilmot Proviso*, 7 August 1846

*Provided*, That, as an express and fundamental condition to the acquisition of any territory from the Republic of Mexico by the United States, by virtue of any treaty which may be negotiated between them, and to the use by the Executive of the moneys hercin appropriated, neither slavery nor involuntary servitude shall ever exist in any part of the said territory, except for crime, whereof the party shall first be duly convicted.

(b) *Clay's Resolutions*, 29 January 1850

It being desirable, for the peace, concord, and harmony of the Union of these States, to settle and adjust amicably all existing questions of controversy between them arising out of the institution of slavery upon a fair, equitable, and just basis: therefore,

1. *Resolved*, That California, with suitable boundaries, ought, upon her application to be admitted as one of the States of this Union, without the imposition by Congress of any restriction in respect to the exclusion or introduction of slavery within those boundaries.

2. *Resolved*, That as slavery does not exist by law, and is not likely to be introduced into any of the territory acquired by the United States from the republic of Mexico, it is inexpedient for Congress to provide by law either for its introduction into, or exclusion from, any part of the said territory; and that appropriate territorial governments ought to be established by Congress in all of the said territory, not assigned as the boundaries of the proposed State of California, without the adoption of any restriction or condition on the subject of slavery.

3. *Resolved*, That the western boundary of the State of Texas ought to be fixed on the Rio del Norte, commencing one marine league from its mouth, and running



up that river to the southern line of New Mexico; thence with that line eastwardly, and so continuing in the same direction to the line as established between the United States and Spain, excluding any portion of New Mexico, whether lying on the east or west of that river.

4. *Resolved*, That it be proposed to the State of Texas, that the United States will provide for the payment of all that portion of the legitimate and bona fide public debt of that State contracted prior to its annexation to the United States, and for which the duties on foreign imports were pledged by the said State to its creditors. not exceeding the sum of — dollars, in consideration of the said duties so pledged having been no longer applicable to that object after the said annexation, but having thenceforward become payable to the United States; and upon the condition, also, that the said State of Texas shall, by some solemn and authentic act of her legislature or of a convention, relinquish to the United States any claim which it has to any part of New Mexico.

5. *Resolved*, That it is inexpedient to abolish slavery in the District of Columbia whilst that institution continues to exist in the State of Maryland, without the consent of that State, without the consent of the people of the District, and without just compensation to the owners of slaves within the District.

6. *But, resolved*, That it is expedient to prohibit, within the District, the slave trade in slaves brought into it from States or places beyond the limits of the District, either to be sold therein as merchandise, or to be transported to other markets without the District of Columbia.

7. *Resolved*, That more effectual provision ought to be made by law, according to the requirement of the constitution, for the restitution and delivery of persons bound to service or labor in any State, who may escape into any other State or Territory in the Union. And,

8. *Resolved*, That Congress has no power to promote or obstruct the trade in slaves between the slaveholding

States; but that the admission or exclusion of slaves brought from one into another of them depends exclusively upon their own particular laws.

(c) *Calhoun's Speech, 4 March 1850*

I have, senators, believed from the first that the agitation of the subject of slavery would, if not prevented by some timely and effective measure, end in disunion. Entertaining this opinion, I have, on all proper occasions, endeavored to call the attention of both of the two great parties which divide the country, to adopt some such measure to prevent so great a disaster, but without success. The agitation has been permitted to proceed, with almost no attempt to resist it, until it has reached a period when it can no longer be disguised or denied that the Union is in danger. You have thus had forced upon you the greatest and the gravest question that ever can come under your consideration: How can the Union be preserved?

To give a satisfactory answer to this mighty question, it is indispensable to have an accurate and thorough knowledge of the nature and the character of the cause by which the Union is endangered. Without such knowledge it is impossible to pronounce, with any certainty, by what means it can be saved; just as it would be impossible for a physician to pronounce, in the case of some dangerous disease, with any certainty, by what remedy the patient could be saved, without similar knowledge of the nature and character of the cause of the disease. The first question, then, presented for consideration, in the investigation I propose, in order to obtain such knowledge, is, What is it that has endangered the Union?

To this question there can be but one answer: that the immediate cause is, the almost universal discontent which pervades all the States composing the Southern section of the Union. This widely extended discontent is not of recent origin. It commenced with the agitation of the slavery question, and has been increasing ever

since. The next question is, What has caused this wide-diffused and almost universal discontent?

It is a great mistake to suppose, as is by some, that it originated with demagogues, who excited the discontent with the intention of aiding their personal advancement; or with disappointed, ambitious individuals, who resorted to it as the means of raising their fallen fortunes. There is no foundation for this opinion. On the contrary, all the great political influences of the section were arrayed against excitement, and exerted to the utmost to keep the public quiet. The great mass of the people of the South were divided, as in the other section, into Whigs and Democrats. The leaders and the presses of both parties in the South were very solicitous to prevent excitement, and restore quiet; because it was seen that the effects of the former would necessarily tend to weaken, if not destroy, the political ties which united them with their respective parties in the other section. Those who know the strength of party ties will readily appreciate the immense force which this cause exerted against agitation, and in favor of preserving quiet. But, as great as it was, it was not sufficiently so to prevent the widespread discontent which now pervades the section. No; some cause far deeper and more powerful must exist, to produce a discontent so wide and deep, than the one inferred. The question then recurs, What is the cause of this discontent? It will be found in the belief of the people of the Southern States, as prevalent as the discontent itself, that they cannot remain, as things now are, consistently with honor and safety, in the Union. The next question, then, to be considered is, What has caused this belief?

One of the causes is, undoubtedly, to be traced to the long-continued agitation of the slave question on the part of the North, and the many aggressions which they have made on the rights of the South, during that time. I will not enumerate them at present, as it will be done hereafter in its proper place.

There is another, lying back of it, but with which

this is intimately connected, that may be regarded as the great and primary cause. It is to be found in the fact that the equilibrium between the two sections in the government, as it stood when the Constitution was ratified, and the government put in action, has been destroyed. At that time there was nearly a perfect equilibrium between the two, which afforded ample means to each to protect itself against the aggression of the other; but as it now stands, one section has exclusive power of controlling the government, which leaves the other without any adequate means of protecting itself against its encroachment and oppression. . . .

The census is to be taken this year, which must add greatly to the decided preponderance of the North in the House of Representatives, and in the electoral college. The prospect is, also, that a great increase will be added to its present preponderance during the period of the decade, by the addition of new States. Two territories—Oregon and Minnesota—are already in progress, and strenuous efforts are making to bring in three additional States from the territory recently conquered from Mexico, which, if successful, will add three other States in a short time to the Northern section, making five States, and increasing its present number of States from fifteen to twenty, and of its senators from thirty to forty. On the contrary, there is not a single territory in progress in the Southern section, and no certainty that any additional State will be added to it during the decade. The prospect, then, is, that the two sections in the Senate, should the efforts now made to exclude the South from the newly conquered territories succeed, will stand, before the end of the decade, twenty Northern States to twelve Southern (conceding Delaware as neutral), and forty Northern senators to twenty-four Southern. This great increase of senators, added to the great increase of members of the House of Representatives, and electoral college, on the part of the North, which must take place upon the next decade, will effectually and eventually destroy the equilibrium which existed when the government commenced.

Had this destruction been the operation of time, without the interference of government, the South would have had no reason to complain; but such was not the fact. It was caused by the legislation of this government, which was appointed as the common agent of all, and charged with the protection of the interests and security of all. The legislation by which it has been effected may be classed under three heads.

The first is that series of acts by which the South has been excluded from the common territory belonging to all the States as the members of the Federal Union, which has had the effect of extending vastly the portion allotted to the Northern section, and restricting within narrow limits the portion left the South. The next consists in adopting a system of revenue and disbursements by which an undue proportion of the burden of taxation has been imposed upon the South, and an undue proportion of its proceeds appropriated to the North; and the last in a system of political measures by which the original character of the government has been radically changed.

I propose to bestow upon each of these, in the order they stand, a few remarks, with the view of showing that it is owing to the action of this government that the equilibrium between the two sections has been destroyed and the whole power of the system centered in a sectional majority.

The first of the series of acts by which the South was deprived of its due share of the territories originated with the Confederacy, which preceded the existence of this government. It is to be found in the provisions of the Ordinance of 1787. Its effect was to exclude the South entirely from that vast and fertile region which lies between the Ohio and the Mississippi, now embracing five States and one Territory. The next of the series is the Missouri Compromise, which excluded the South from that large portion of Louisiana which lies north of 36° 30', excepting what is included in the State of Missouri. The last of the series excludes the South from the whole of the Oregon territory. All these, in

the slang of the day, were what is called slave territory, and not free soil; that is, territories belonging to slave-holding powers, and open to the emigration of masters with their slaves. . . .

The next is the system of revenue and disbursements which has been adopted by the government. It is well known that the main source from which the government has derived its revenue is from duties on imports. I shall not undertake to show that all such duties must necessarily fall mainly on the exporting States, and that the South, as the great exporting portion of the Union, has in reality paid vastly more than her due proportion of the revenue, because I deem it unnecessary, as the subject has on so many occasions been fully discussed. Nor shall I, for the same reason, undertake to show that a far greater portion of the revenue has been disbursed at the North than its due share; and that the joint effect of these causes has been to transfer a vast amount from the South to the North, which, under an equal system of revenue and disbursement, would not have been lost to her. If to this be added that many of the duties were imposed, not for revenue, but for protection, that is, intended to put money, not into the treasury, but directly into the pocket of the manufacturers, some conception may be formed of the immense amount which, in the long course of so many years, has been transferred from the South to the North. There is no data by which it can be estimated with any certainty; but it is safe to say that it amounts to hundreds of millions of dollars. Under the most moderate estimate, it would be sufficient to add greatly to the wealth of the North, and by that greatly increase her population, by attracting emigration from all quarters in that direction. . . .

But while these measures were destroying the equilibrium between the two sections, the action of the government was leading to a radical change in its character, by concentrating all the power of the system in itself. The occasion will not permit me to trace the measures by which this great change has been

consummated. If it did, it would not be difficult to show that the process commenced at an early period of the government; that it proceeded almost without interruption, step by step, until it absorbed, virtually, its entire powers. Without, however, going through the whole process to establish the fact, it may be done satisfactorily by a very short statement.

That this government claims, and practically maintains, the right to decide in the last resort, as to the extent of its powers, will scarcely be denied by anyone conversant with the political history of the country, is equally certain. That it also claims the right to resort to force, to maintain whatever power she claims against all opposition. Indeed, it is apparent from what we daily hear, that this has become the prevailing and fixed opinion of a great majority of the community. Now, I ask, what limitation can possibly be placed upon the powers of a government claiming and exercising such rights? And, if none can be, how can the separate government of the States maintain and protect the powers reserved to them by the Constitution, or the people of the several States maintain those which are reserved to them, and among them their sovereign powers, by which they ordained and established, not only their separate State constitutions and governments, but also the Constitution and government of the United States? But if they have no constitutional means of maintaining them against the right claimed by this government, it necessarily follows that they hold them at its pleasure and discretion, and that all the powers of the system are, in reality, concentrated in it. It also follows that the character of the government has been changed in consequence from a federal republic, as it originally came from the hands of its framers, and that it has been changed into a great national consolidated democracy. It has, indeed, at present, all the characteristics of the latter, and not one of the former, although it still retains its outward form.

The result of the whole of these causes combined is, that the North has acquired a decided ascendancy over

every department of this government, and, through it, a control over all the powers of the system. A single section, governed by the will of the numerical majority, has now, in fact, the control of the government, and the entire powers of the system. What was once a constitutional federal republic, is now converted, in reality, into one as absolute as that of the Autocrat of Russia, and as despotic in its tendency as any absolute government that ever existed.

As, then, the North has the absolute control over the government, it is manifest that, on all questions between it and the South, where there is a diversity of interests, the interest of the latter will be sacrificed to the former, however oppressive the effects may be, as the South possesses no means by which it can resist, through the action of the government. But if there were no questions of vital importance to the South, in reference to which there was a diversity of views between the two sections, this state of things might be endured, without the hazard of destruction, by the South. But such is not the fact. There is a question of vital importance to the Southern section, in reference to which the views and feelings of the two sections are opposite and hostile as they can possibly be.

I refer to the relations between the two races in the Southern section, which constitutes a vital portion of her social organization. Every portion of the North entertains views and feelings more or less hostile to it. Those most opposed and hostile regard it as a sin, and consider themselves under the most sacred obligation to use every effort to destroy it. Indeed, to the extent that they conceive they have power, they regard themselves as implicated in the sin, and responsible for suppressing it, by the use of all and every means. Those less opposed and hostile regard it as a crime—an offense against humanity, as they call it, and, although not so fanatical, feel themselves bound to use all efforts to effect the same object. While those who are least opposed and hostile regard it as a blot and a stain on the character of what they call a nation, and feel themselves



accordingly bound to give it no countenance or support. On the contrary, the Southern section regards the relation as one which cannot be destroyed without subjecting the two races to the greatest calamity, and the section to poverty, desolation, and wretchedness, and accordingly feels bound, by every consideration of interest, safety, and duty, to defend it. . . .

Having now, senators, explained what it is that endangers the Union, and traced it to its cause, and explained its nature and character, the great question again recurs, How can the Union be saved? To this I answer, There is but one way by which it can be, and that is, by adopting such measures as will satisfy the States belonging to the Southern section, that they can remain in the Union consistently with their honor and their safety. There is, again, only one way by which that can be effected, and that is, by reviewing the causes by which this belief has been produced. Do that, and discontent will cease, harmony and kind feelings between the sections be restored, and every apprehension of danger to the Union removed. The question then is, By what means can this be done? But before I undertake to answer this question, I propose to show by what it cannot be done.

It cannot, then, be done by eulogies on the Union, however splendid or numerous. The cry of Union! Union! the glorious Union! can no more prevent disunion, than the cry of Health! health! glorious health! on the part of the physician can save a patient lying dangerously ill. So long as the Union, instead of being regarded as a protector, is regarded in the opposite character by not much less than a majority of the States, it will be in vain to attempt to concentrate them by pronouncing eulogies on it.

Besides, this cry of Union comes commonly from those whom we cannot believe to be sincere. It usually comes from our assailants; but we cannot believe them to be sincere, for if they loved the Union, they would necessarily be devoted to the Constitution. It made the Union, and to destroy the Constitution would be

to destroy the Union. But the only reliable and certain evidence of devotion to the Constitution is, to abstain, on the one hand, from violating it, and to repel, on the other, all attempts to violate it. It is only by faithfully performing those high duties that the Constitution can be preserved, and with it the Union.

But how, then, stands the profession of devotion to the Union by our assailants. when brought to this test? Have they abstained from violating the Constitution? Let the many Acts passed by the Northern States, to set aside and annul the clause of the Constitution providing for the delivery of fugitive slaves, answer. I cite this, not that it is the only instance (for there are many others), but because the violation, in this particular, is too notorious and palpable to be denied. Again, have they stood forth faithfully to repel violations of the Constitution? Let their course in reference to the agitation of the slavery question, which was commenced and has been carried on for fifteen years, avowedly for the purpose of abolishing slavery in the States—an object all acknowledged to be unconstitutional—answer. Let them show a single instance, during this long period, in which they have denounced the agitators, or their many attempts to effect what is admitted to be unconstitutional, or a single measure which they have brought forward for that purpose. How can we, with all these facts before us, believe that they are sincere in their profession of devotion to the Union, or avoid believing that, by assuming the cloak of patriotism, their profession is but intended to increase the vigor of their assaults, and to weaken the force of our resistance?

Nor can we regard the profession of devotion to the Union, on the part of those who are not our assailants, as sincere. when they pronounce eulogies upon the Union evidently with the intent of charging us with disunion, without uttering one word of denunciation against our assailants. If friends of the Union, their course should be to unite with us in repelling these assaults, and denouncing the authors as enemies of the

Union. Why they avoid this and pursue the course they obviously do, it is for them to explain.

Nor can the Union be saved by invoking the name of the illustrious Southerner, whose mortal remains repose on the western bank of the Potomac. He was one of us—a slaveholder and a planter. We have studied his history, and find nothing in it to justify submission to wrong. On the contrary, his great fame rests on the solid foundation that, while he was careful to avoid doing wrong to others, he was prompt and decided in repelling wrong. I trust that, in this respect, we profited by his example. . . .

*(d) Webster's Speech, 7 March 1850*

Mr President,—I wish to speak to-day, not as a Massachusetts man, nor as a Northern man, but as an American, and a member of the Senate of the United States. It is fortunate that there is a Senate of the United States; a body not yet moved from its propriety, not lost to a just sense of its own dignity and its own high responsibilities, and a body to which the country looks, with confidence, for wise, moderate, patriotic, and healing counsels. It is not to be denied that we live in the midst of strong agitations, and are surrounded by very considerable dangers to our institutions and government. The imprisoned winds are let loose. The East, the North, and the stormy South combine to throw the whole sea into commotion, to toss its billows to the skies, and disclose its profoundest depths. I do not affect to regard myself, Mr President, as holding, or as fit to hold, the helm in this combat with the political elements; but I have a duty to perform, and I mean to perform it with fidelity, not without a sense of existing dangers, but not without hope. I have a part to act, not for my own security or safety, for I am looking out for no fragment upon which to float away from the wreck, if wreck there must be, but for the good of the whole, and the preservation of all; and there is that which will keep me to my duty during this struggle,

whether the sun and the stars shall appear, or shall not appear for many days. I speak to-day for the preservation of the Union. 'Hear me for my cause.' I speak to-day, out of a solicitous and anxious heart, for the restoration to the country of that quiet and that harmony which make the blessings of this Union so rich, and so dear to us all. These are the topics that I propose to myself to discuss; these are the motives, and the sole motives, that influence me in the wish to communicate my opinions to the Senate and the country; and if I can do anything, however little, for the promotion of these ends, I shall have accomplished all that I expect. . . .

Now, Sir, upon the general nature and influence of slavery there exists a wide difference of opinion between the northern portion of this country and the southern. It is said on the one side, that, although not the subject of any injunction or direct prohibition in the New Testament, slavery is a wrong; that it is founded merely in the right of the strongest; and that it is an oppression, like unjust wars, like all those conflicts by which a powerful nation subjects a weaker to its will; and that, in its nature, whatever may be said of it in the modifications which have taken place, it is not according to the meek spirit of the Gospel. It is not 'kindly affectioned'; it does not 'seek another's, and not its own'; it does not 'let the oppressed go free'. These are sentiments that are cherished, and of late with greatly augmented force, among the people of the Northern States. They have taken hold of the religious sentiment of that part of the country, as they have, more or less, taken hold of the religious feelings of a considerable portion of mankind. The South, upon the other side, having been accustomed to this relation between the two races all their lives, from their birth, having been taught, in general, to treat the subjects of this bondage with care and kindness, and I believe, in general, feeling great kindness for them, have not taken the view of the subject which I have mentioned. There are thousands of religious men, with consciences

as tender as any of their brethren at the North, who do not see the unlawfulness of slavery; and there are more thousands, perhaps, that, whatsoever they may think of it in its origin, and as a matter depending upon natural right, yet take things as they are, and, finding slavery to be an established relation of the society in which they live, can see no way in which, let their opinions on the abstract question be what they may, it is in the power of the present generation to relieve themselves from this relation. And candor obliges me to say, that I believe they are just as conscientious. many of them, and the religious people, all of them, as they are at the North who hold different opinions. . . .

But we must view things as they are. Slavery does exist in the United States. It did exist in the States before the adoption of this Constitution, and at that time. Let us, therefore, consider for a moment what was the state of sentiment, North and South, in regard to slavery, at the time this Constitution was adopted. A remarkable change has taken place since; but what did the wise and great men of all parts of the country think of slavery then? In what estimation did they hold it at the time when this Constitution was adopted? It will be found, Sir, if we will carry ourselves by historical research back to that day, and ascertain men's opinions by authentic records still existing among us, that there was then no diversity of opinion between the North and the South upon the subject of slavery. It will be found that both parts of the country held it equally an evil, a moral and political evil. It will not be found that, either at the North or at the South, there was much, though there was some, invective against slavery as inhuman and cruel. The great ground of objection to it was political; that it weakened the social fabric; that, taking the place of free labor, society became less strong and labor less productive; and therefore we find from all the eminent men of the time the clearest expression of their opinion that slavery is an evil. They ascribed its existence here, not without truth, and not without some acerbity of temper and

force of language, to the injurious policy of the mother country, who, to favor the navigator, had entailed these evils upon the Colonies. I need hardly refer, Sir, particularly to the publications of the day. They are matters of history on the record. The eminent men, the most eminent men, and nearly all the conspicuous politicians of the South, held the same sentiments; that slavery was an evil, a blight, a scourge, and a curse. There are no terms of reprobation of slavery so vehement in the North at that day as in the South. The North was not so much excited against it as the South; and the reason is, I suppose, that there was much less of it at the North, and the people did not see, or think they saw, the evils so prominently as they were seen, or thought to be seen, at the South.

Then, Sir, when this Constitution was framed, this was the light in which the Federal Convention viewed it. That body reflected the judgment and sentiments of the great men of the South. A member of the other house, whom I have not the honor to know, has, in a recent speech, collected extracts from these public documents. They prove the truth of what I am saying, and the question then was, how to deal with it, and how to deal with it as an evil. They came to this general result. They thought that slavery could not be continued in the country if the importation of slaves were made to cease, and therefore they provided that, after a certain period, the importation might be prevented by the Act of the new government. The period of twenty years was proposed by some gentleman from the North, I think, and many members of the Convention from the South opposed it as being too long. Mr Madison especially was somewhat warm against it. He said it would bring too much of this mischief into the country to allow the importation of slaves for such a period. Because we must take along with us, in the whole of this discussion, when we are considering the sentiments and opinions in which the constitutional provision originated, that the conviction of all men was, that, if the importation of slaves ceased, the white

race would multiply faster than the black race, and that slavery would therefore gradually wear out and expire. It may not be improper here to allude to that, I had almost said, celebrated opinion of Mr Madison. You observe, Sir, that the term *slave*, or *slavery*, is not used in the Constitution. The Constitution does not require that 'fugitive slaves' shall be delivered up. It requires that persons held to service in one State, and escaping into another, shall be delivered up. Mr Madison opposed the introduction of the term *slave*, or *slavery*, into the Constitution; for he said that he did not wish to see it recognized by the Constitution of the United States of America that there could be property in men. . . .

Mr President, in the excited times in which we live, there is found to exist a state of crimination and recrimination between the North and South. There are lists of grievances produced by each; and those grievances, real or supposed, alienate the minds of one portion of the country from the other, exasperate the feelings, and subdue the sense of fraternal affection, patriotic love, and mutual regard. I shall bestow a little attention, Sir, upon these various grievances existing on the one side and on the other. I begin with complaints of the South. I will not answer, further than I have, the general statements of the honorable Senator from South Carolina, that the North has prospered at the expense of the South in consequence of the manner of administering this government, in the collecting of its revenues, and so forth. These are disputed topics, and I have no inclination to enter into them. But I will allude to other complaints of the South, and especially to one which has in my opinion just foundation; and that is, that there has been found at the North, among individuals and among legislators, a disinclination to perform fully their constitutional duties in regard to the return of persons bound to service who have escaped into the free States. In that respect, the South, in my judgment, is right, and the North is wrong. Every member of every

Northern legislature is bound by oath, like every other officer in the country, to support the Constitution of the United States; and the article of the Constitution which says to these States that they shall deliver up fugitives from service is as binding in honor and conscience as any other article. No man fulfils his duty in any legislature who sets himself to find excuses, evasions, escapes from this constitutional obligation. I have always thought that the Constitution addressed itself to the legislatures of the States or to the States themselves. It says that those persons escaping to other States 'shall be delivered up', and I confess I have always been of the opinion that it was an injunction upon the States themselves. When it is said that a person escaping into another State, and coming therefore within the jurisdiction of that State, shall be delivered up, it seems to me the import of the clause is, that the State itself, in obedience to the Constitution, shall cause him to be delivered up. That is my judgment. I have always entertained that opinion, and I entertain it now. But when the subject, some years ago, was before the Supreme Court of the United States, the majority of the judges held that the power to cause fugitives from service to be delivered up was a power to be exercised under the authority of this government. I do not know, on the whole, that it may not have been a fortunate decision. My habit is to respect the result of judicial deliberations and the solemnity of judicial decisions. As it now stands, the business of seeing that these fugitives are delivered up resides in the power of Congress and the national judicature, and my friend at the head of the Judiciary Committee has a Bill on the subject now before the Senate, which, with some amendments to it, I propose to support, with all its provisions, to the fullest extent. And I desire to call the attention of all sober-minded men at the North, of all conscientious men, of all men who are not carried away by some fanatical idea or some false impression, to their constitutional obligations. I put it to all the sober and sound minds at the North as a question of



morals and a question of conscience. What right have they, in their legislative capacity or any other capacity, to endeavor to get round this Constitution, or to embarrass the free exercise of the rights secured by the Constitution to the persons whose slaves escape from them? None at all; none at all. Neither in the forum of conscience, nor before the face of the Constitution, are they, in my opinion, justified in such an attempt. Of course it is a matter for their consideration. They probably, in the excitement of the times, have not stopped to consider of this. They have followed what seemed to be the current of thought and of motives, as the occasion arose, and they have neglected to investigate fully the real question, and to consider their constitutional obligations; which, I am sure, if they did consider, they would fulfil with alacrity. I repeat, therefore, Sir, that here is a well-founded ground of complaint against the North, which ought to be removed, which it is now in the power of the different departments of this government to remove; which calls for the enactment of proper laws authorizing the judicature of this government, in the several States, to do all that is necessary for the recapture of fugitive slaves and for their restoration to those who claim them. Wherever I go, and whenever I speak on the subject, and when I speak here I desire to speak to the whole North, I say that the South has been injured in this respect, and has a right to complain; and the North has been too careless of what I think the Constitution preemtorily and emphatically enjoins upon her as a duty. . . .

Mr President, I should much prefer to have heard from every member on this floor declarations of opinion that this Union could never be dissolved, than the declaration of opinion by anybody, that, in any case, under the pressure of any circumstances, such a dissolution was possible. I hear with distress and anguish the word 'secession', especially when it falls from the lips of those who are patriotic, and known to the country, and known all over the world, for their political services.

Secession! Peaceable secession! Sir, your eyes and mine are never destined to see that miracle. The dismemberment of this vast country without convulsion! The breaking up of the fountains of the great deep without ruffling the surface! Who is so foolish, I beg everybody's pardon, as to expect to see any such thing? Sir, he who sees these States, now revolving in harmony around a common centre, and expects to see them quit their places and fly off without convulsion, may look the next hour to see the heavenly bodies rush from their spheres, and jostle against each other in the realms of space, without causing the wreck of the universe. There can be no such thing as a peaceable secession. Peaceable secession is an utter impossibility. Is the great Constitution under which we live, covering this whole country, is it to be thawed and melted away by secession, as the snows on the mountain melt under the influence of a vernal sun, disappear almost unobserved, and run off? No, Sir! No, Sir! I will not state what might produce the disruption of the Union; but, Sir, I see as plainly as I see the sun in heaven what that disruption itself must produce; I see that it must produce war, and such a war as I will not describe, *in its twofold character.*

Peaceable secession! Peaceable secession! The concurrent agreement of all the members of this great republic to separate! A voluntary separation, with alimony on one side and on the other. Why, what would be the result? Where is the line to be drawn? What States are to secede? What is to remain American? What am I to be? An American no longer? Am I to become a sectional man, a local man, a separatist, with no country in common with the gentlemen who sit around me here, or who fill the other house of Congress? Heaven forbid! Where is the flag of the republic to remain? Where is the eagle still to tower? or is he to cower, and shrink, and fall to the ground? Why, Sir, our ancestors, our fathers and our grandfathers, those of them that are yet living amongst us with prolonged lives, would rebuke and reproach us;

and our children and our grandchildren would cry out shame upon us, if we of this generation should dishonor these ensigns of the power of the government and the harmony of that Union which is every day felt among us with so much joy and gratitude. What is to become of the army? What is to become of the navy? What is to become of the public lands? How is each of the thirty States to defend itself? I know, although the idea has not been stated distinctly, there is to be, or it is supposed possible that there will be, a Southern Confederacy. I do not mean, when I allude to this statement, that anyone seriously contemplates such a state of things. I do not mean to say that it is true, but I have heard it suggested elsewhere, that the idea has been entertained, that, after the dissolution of this Union, a Southern Confederacy might be formed. I am sorry, Sir, that it has ever been thought of, talked of, or dreamed of, in the wildest flights of human imagination. But the idea, so far as it exists, must be of a separation, assigning the slave States to one side and the free States to the other. Sir, I may express myself too strongly, perhaps, but there are impossibilities in the natural as well as in the physical world, and I hold the idea of a separation of these States, those that are free to form one government, and those that are slave-holding to form another, as such an impossibility. We could not separate the States by any such line, if we were to draw it. We could not sit down here to-day and draw a line of separation that would satisfy any five men in the country. There are natural causes that would keep and tie us together, and there are social and domestic relations which we could not break if we would, and which we should not if we could.

Sir, nobody can look over the face of this country at the present moment, nobody can see where its population is the most dense and growing, without being ready to admit, and compelled to admit, that ere long the strength of America will be in the Valley of the Mississippi. Well, now, Sir, I beg to inquire what the

wildest enthusiast has to say on the possibility of cutting that river in two, and leaving free States at its source and on its branches, and slave States down near its mouth, each forming a separate government? Pray, Sir, let me say to the people of this country, that these things are worthy of their pondering and of their consideration. Here, Sir, are five millions of freemen in the free States north of the river Ohio. Can anybody suppose that this population can be severed, by a line that divides them from the territory of a foreign and an alien government, down somewhere, the Lord knows where, upon the lower banks of the Mississippi? What would become of Missouri? Will she join the *arrondissement* of the slave States? Shall the man from the Yellow Stone and the Platte be connected, in the new republic, with the man who lives on the southern extremity of the Cape of Florida? Sir, I am ashamed to pursue this line of remark. I dislike it, I have an utter disgust for it. I would rather hear of natural blasts and mildews, war, pestilence, and famine, than to hear gentlemen talk of secession. To break up this great government! to dismember this glorious country! to astonish Europe with an act of folly such as Europe for two centuries has never beheld in any government or any people! No, Sir! no, Sir! There will be no secession! Gentlemen are not serious when they talk of secession. . . .

And now, Mr President, I draw these observations to a close. I have spoken freely, and I meant to do so. I have sought to make no display. I have sought to enliven the occasion by no animated discussion, nor have I attempted any train of elaborate argument. I have wished only to speak my sentiments, fully and at length, being desirous, once and for all, to let the Senate know, and to let the country know, the opinions and sentiments which I entertain on all these subjects. These opinions are not likely to be suddenly changed. If there be any future service that I can render to the country, consistently with these sentiments and opinions, I shall cheerfully render it. If there be not, I shall

still be glad to have had an opportunity to disburden myself from the bottom of my heart, and to make known every political sentiment that therein exists.

And now, Mr President, instead of speaking of the possibility or utility of secession, instead of dwelling in those caverns of darkness, instead of groping with those ideas so full of all that is horrid and horrible, let us come out into the light of day; let us enjoy the fresh air of Liberty and Union; let us cherish those hopes which belong to us; let us devote ourselves to those great objects that are fit for our consideration and our action; let us raise our conceptions to the magnitude and the importance of the duties that devolve upon us; let our comprehension be as broad as the country for which we act, our aspirations as high as its certain destiny; let us not be pigmies in a case that calls for men. Never did there devolve on any generation of men higher trusts than now devolve upon us, for the preservation of this Constitution and the harmony and peace of all who are destined to live under it. Let us make our generation one of the strongest and brightest links in that golden chain which is destined, I fondly believe, to grapple the people of all the States to this Constitution for ages to come. We have a great, popular, constitutional government, guarded by law and by judicature, and defended by the affections of the whole people. No monarchical throne presses these States together, no iron chain of military power encircles them; they live and stand under a government popular in its form, representative in its character, founded upon principles of equality, and so constructed, we hope, as to last for ever. In all its history it has been beneficent; it has trodden down no man's liberty; it has crushed no State. Its daily respiration is liberty and patriotism; its yet youthful veins are full of enterprise, courage, and honorable love of glory and renown. Large before, the country has now, by recent events, become vastly larger. This republic now extends, with a vast breadth, across the whole continent. The two great seas of the world wash the one and the other shore. We realize,

on a mighty scale, the beautiful description of the ornamental border of the buckler of Achilles:—

‘Now, the broad shield complete, the artist crowned  
With his last hand, and poured the ocean round;  
In living silver seemed the waves to roll,  
And beat the buckler’s verge, and bound the whole.’

*(c) Seward’s Speech*

. . . Another objection arises out of the principle on which the demand for compromise rests. That principle assumes a classification of the States as northern and southern States, as it is expressed by the honorable senator from South Carolina [Mr Calhoun], but into slave States and free States, as more directly expressed by the honorable senator from Georgia [Mr Berrien]. The argument is, that the States are severally equal, and that these two classes were equal at the first, and that the Constitution was founded on that equilibrium; that the States being equal, and the classes of the States being equal in rights, they are to be regarded as constituting an association in which each State, and each of these classes of States, respectively, contribute in due proportions: that the new territories are a common acquisition, and the people of these several States and classes of States have an equal right to participate in them, respectively; that the right of the people of the slave States to emigrate to the territories with their slaves as property is necessary to afford such a participation on their part, inasmuch as the people of the free States emigrate into the same territories with their property. And the argument deduces from this right the principle that, if Congress exclude slavery from any part of this new domain, it would be only just to set off a portion of the domain—some say south 36° 30′, others south of 34°—which should be regarded at least as free to slavery, and to be organized into slave States.

Argument ingenious and subtle, declamation earnest and bold, and persuasion gentle and winning as the voice of the turtle dove when it is heard in the land,

all alike and all together have failed to convince me of the soundness of this principle of the proposed compromise, or of any of the propositions on which it is attempted to be established. . . .

But even if the States continue under the Constitution as States, they nevertheless surrendered their equality as States, and submitted themselves to the sway of the numerical majority, with qualifications or checks; first, of the representation of three-fifths of slaves in the ratio of representation and taxation; and, secondly, of the equal representation of States in the Senate.

The proposition of an established classification of States as *slave States* and *free States*, as insisted on by some, and into *northern* and *southern*, as maintained by others, seems to me purely imaginary, and of course the supposed equilibrium of those classes a mere conceit. This must be so, because, when the Constitution was adopted, twelve of the thirteen States were slave States, and so there was no equilibrium. And so as to the classification of States as northern States and southern States. It is the maintenance of slavery by law in a State, not parallels of latitude, that makes it a southern State; and the absence of this that makes it a northern State. And so all the States, save one, were southern States, and there was no equilibrium. But the Constitution was made not only for southern and northern States, but for States neither northern nor southern, namely, the western States, their coming in being foreseen and provided for.

It needs little argument to show that the idea of a joint stock association, or a copartnership, as applicable even by its analogies to the United States, is erroneous, with all the consequences fancifully deduced from it. The United States are a political State, or organized society, whose end is government, for the security, welfare, and happiness of all who live under its protection. The theory I am combating reduces the objects of government to the mere spoils of conquest. Contrary to a theory so debasing, the preamble of the Constitution not only asserts the sovereignty to be, not

in the States, but in the people, but also promulgates the objects of the Constitution :

‘We, the people of the United States, in order to form a *more perfect union*, establish *justice*, insure *domestic tranquillity*, provide for the *common defence*, promote the GENERAL WELFARE, and secure the *blessings of liberty*, do ordain and establish this Constitution.’

Objects sublime and benevolent ! They exclude the very idea of conquests, to be either divided among States or even enjoyed by them, for the purpose of securing, not the blessings of liberty, but the evils of slavery. There is a novelty in the principle of the proposed compromise which condemns it. Simultaneously with the establishment of the Constitution, Virginia ceded to the United States her domain, which then extended to the Mississippi, and was even claimed to extend to the Pacific Ocean. Congress accepted it, and unanimously devoted the domain to freedom, in the language from which the ordinance now so severely condemned was borrowed. Five States have already been organized on this domain, from all of which, in pursuance of that ordinance, slavery is excluded. How did it happen that this theory of the equality of States, of the classification of States, of the equilibrium of States, of the title of the States to common enjoyment of the domain, or to an equitable and just partition between them, was never promulgated, nor even dreamed of, by the slave States, when they unanimously consented to that ordinance ?

There is another aspect of the principle of compromise which deserves consideration. It assumes that slavery, if not the only institution in a slave State, is at least a ruling institution, and that this characteristic is recognized by the Constitution. But *slavery* is only *one* of many institutions there. Freedom is equally an institution there. Slavery is only a temporary, accidental, partial, and incongruous one. Freedom, on the contrary, is a perpetual, organic, universal one, in harmony with the Constitution of the United States.



The slaveholder himself stands under the protection of the latter, in common with all the free citizens of the State. But it is, moreover, an indispensable institution. You may separate slavery from South Carolina, and the State will still remain; but if you subvert freedom there, the State will cease to exist. But the principle of this compromise gives complete ascendancy in the slave States, and in the Constitution of the United States, to the subordinate, accidental, and incongruous institution, over its paramount antagonist. To reduce this claim of slavery to an absurdity, it is only necessary to add that there are only two States in which slaves are a majority, and not one in which the slaveholders are not a very disproportionate minority.

But there is yet another aspect in which this principle must be examined. It regards the domain only as a possession, to be enjoyed either in common or by partition by the citizens of the old States. It is true, indeed, that the national domain is ours. It is true it was acquired by the valor and with the wealth of the whole nation. But we hold, nevertheless, no arbitrary power over it. We hold no arbitrary authority over anything, whether acquired lawfully or seized by usurpation. The Constitution regulates our stewardship; the Constitution devotes the domain to union, to justice, to defence, to welfare, and to liberty.

But there is a higher law than the Constitution, which regulates our authority over the domain, and devotes it to the same noble purposes. The territory is a part, no inconsiderable part, of the common heritage of mankind, bestowed upon them by the Creator of the universe. We are his stewards, and must so discharge our trust as to secure in the highest attainable degree their happiness. How momentous that trust is, we may learn from the instructions of the founder of modern philosophy:

'No man,' says Bacon, 'can by care-taking, as the Scripture saith, add a cubit to his stature in this little model of a man's body; but, in the great frame of kingdoms and common-wealths, it is in the power of princes or estates to add

amplitude and greatness to their kingdoms. For, by introducing such ordinances, constitutions, and customs, as are wise, they may sow greatness to their posterity and successors. But these things are commonly not observed, but left to take their chance.'

This is a State, and we are deliberating for it, just as our fathers deliberated in establishing the institutions we enjoy. Whatever superiority there is in our condition and hopes over those of any other 'kingdom' or 'estate', is due to the fortunate circumstance that our ancestors did not leave things to 'take their chance', but that they 'added amplitude and greatness' to our commonwealth 'by introducing such ordinances, constitutions, and customs, as were wise'. We in our turn have succeeded to the same responsibilities, and we cannot approach the duty before us wisely or justly, except we raise ourselves to the great consideration of how we can most certainly 'sow greatness to our posterity and successors'.

And now the simple, bold, and even awful question which presents itself to us is this: Shall we, who are founding institutions, social and political, for countless millions; shall we, who know by experience the wise and the just, and are free to choose them, and to reject the erroneous and unjust; shall we establish human bondage, or permit it by our sufferance to be established? Sir, our forefathers would not have hesitated an hour. They found slavery existing here, and they left it only because they could not remove it. There is not only no free State which would now establish it, but there is no slave State which, if it had had the free alternative as we now have, would have founded slavery. Indeed, our revolutionary predecessors had precisely the same question before them in establishing an organic law under which the States of Ohio, Indiana, Michigan, Illinois, and Wisconsin have since come into the Union, and they solemnly repudiated and excluded slavery from those States forever. I confess that the most alarming evidence of our degeneracy which has yet been given is found in the fact that we even debate such a question.

*(f) Clay's Final Speech*

. . . It has been objected against this measure that it is a compromise. It has been said that it is a compromise of principle, or of a principle. Mr President, what is a compromise? It is a work of mutual concession—an agreement in which there are reciprocal stipulations—a work in which, for the sake of peace and concord, one party abates his extreme demands in consideration of an abatement of extreme demands by the other party: it is a measure of mutual concession—a measure of mutual sacrifice. Undoubtedly, Mr President, in all such measures of compromise, one party would be very glad to get what he wants, and reject what he does not desire but which the other party wants. But when he comes to reflect that, from the nature of the government and its operations, and from those with whom he is dealing, it is necessary upon his part, in order to secure what he wants, to grant something to the other side, he should be reconciled to the concession which he has made in consequence of the concession which he is to receive, if there is no great principle involved, such as a violation of the Constitution of the United States. I admit that such a compromise as that ought never to be sanctioned or adopted. But I now call upon any senator in his place to point out from the beginning to the end, from California to New Mexico, a solitary provision in this bill which is violative of the Constitution of the United States. . . .

The responsibility of this great measure passes from the hands of the committee, and from my hands. They know, and I know, that it is an awful and tremendous responsibility. I hope that you will meet it with a just conception and a true appreciation of its magnitude, and the magnitude of the consequences that may ensue from your decision one way or the other. The alternatives, I fear, which the measure presents, are concord and increased discord; a servile civil war, originating in its causes on the lower Rio Grande, and terminating possibly in its consequences on the upper Rio Grande

in the Santa Fé country, or the restoration of harmony and fraternal kindness. I believe from the bottom of my soul that the measure is the reunion of this Union. I believe it is the dove of peace, which, taking its aerial flight from the dome of the capitol, carries the glad tidings of assured peace and restored harmony to all the remotest extremities of this distracted land. I believe that it will be attended with all these beneficent effects. And now let us discard all resentment, all passions, all petty jealousies, all personal desires, all love of place, all hankerings after the gilded crumbs which fall from the table of power. Let us forget popular fears, from whatever quarter they may spring. Let us go to the limpid fountain of unadulterated patriotism, and, performing a solemn lustration, return divested of all selfish, sinister, and sordid impurities, and think alone of our God, our country, our consciences, and our glorious Union—that Union without which we shall be torn into hostile fragments, and sooner or later become the victims of military despotism or foreign domination.

Mr President, what is an individual man? An atom, almost invisible without a magnifying glass—a mere speck upon the surface of the immense universe; not a second in time, compared to immeasurable, never-beginning, and never-ending eternity; a drop of water in the great deep, which evaporates and is borne off by the winds; a grain of sand, which is soon gathered to the dust from which it sprung. Shall a being so small, so petty, so fleeting, so evanescent, oppose itself to the onward march of a great nation which is to subsist for ages and ages to come; oppose itself to that long line of posterity which, issuing from our loins, will endure during the existence of the world? Forbid it, God. Let us look to our country and our cause, elevate ourselves to the dignity of pure and disinterested patriots, and save our country from all impending dangers. What if, in the march of this nation to greatness and power, we should be buried beneath the wheels that propel it onward! What are we—what is any man

—worth who is not ready and willing to sacrifice himself for the benefit of his country when it is necessary?

Now, Mr President, allow me to make a short appeal to some senators—to the whole of the Senate. Here is my friend from Virginia (Mr Mason), of whom I have never been without hopes. I have thought of the revolutionary blood of George Mason which flows in his veins—of the blood of his own father—of his own accomplished father—my cherished friend for many years. Can he, knowing, as I think he must know, the wishes of the people of his own State; can he, with the knowledge he possesses of the public sentiment there, and of the high obligation cast upon him by his noble ancestry, can he hazard Virginia's greatest and most glorious work—that work, at least, which she, perhaps more than any other State, contributed her moral and political power to erect? Can he put at hazard this noble Union, with all its beneficial effects and consequences, in the pursuit of abstractions and metaphysical theories—objects unobtainable, or worthless, if attained—while the honor of our common native State, which I reverence and respect with as much devotion as he does, while the honor of that State, and the honor of the South are preserved unimpaired by this measure?

I appeal, Sir, to the senators from Rhode Island and from Delaware; my little friends which have stood by me, and by which I have stood, in all the vicissitudes of my political life; two glorious patriotic little States, which, if there is to be a breaking up of the waters of this Union, will be swallowed up in the common deluge, and left without support. Will they hazard that Union, which is their strength, their power, and their greatness?

Let such an event as I have alluded to occur, and where will be the sovereign power of Delaware and Rhode Island?

If this Union shall become separated, new unions, new confederacies, will arise. And with respect to this, if there be any—I hope there is no one in the Senate—

before whose imagination is flitting the idea of a great Southern confederacy to take possession of the Balize and the mouth of the Mississippi, I say in my place never—*never*—NEVER will we who occupy the broad waters of the Mississippi and its upper tributaries consent that any foreign flag shall float at the Balize or upon the turrets of the Crescent City—NEVER! NEVER! I call upon all the South. Sir, we have had hard words, bitter words, bitter thoughts, unpleasant feelings toward each other in the progress of this great measure. Let us forget them. Let us sacrifice these feelings. Let us go to the altar of our country and swear, as the oath was taken of old, that we will stand by her; that we will support her; that we will uphold her Constitution; that we will preserve her union; and that we will pass this great, comprehensive, and healing system of measures, which will hush all the jarring elements and bring peace and tranquillity to our homes.

Let me, Mr President, in conclusion, say that the most disastrous consequences would occur, in my opinion, were we to go home, doing nothing to satisfy and tranquillize the country upon these great questions. What will be the judgment of mankind, what the judgment of that portion of mankind who are looking upon the progress of this scheme of self-government as being that which holds the highest hopes and expectations of ameliorating the condition of mankind—what will their judgment be? Will not all the monarchs of the Old World pronounce our glorious republic a disgraceful failure? What will be the judgment of our constituents, when we return to them and they ask us: ‘How have you left your country? Is all quiet—all happy? Are all the seeds of distraction or division crushed and dissipated?’ And, sir, when you come into the bosom of your family, when you come to converse with the partner of your fortunes, of your happiness, and of your sorrows, and when in the midst of the common offspring of both of you, she asks you: ‘Is there any danger of civil war? Is there any danger of the torch being applied to any portion of the country?

Have you settled the questions which you have been so long discussing and deliberating upon at Washington? Is all peace and all quiet?" what response, Mr President, can you make to that wife of your choice and those children with whom you have been blessed by God? Will you go home and leave all in disorder and confusion—all unsettled—all open? The contentions and agitations of the past will be increased and augmented by the agitations resulting from our neglect to decide them. Sir, we shall stand condemned by all human judgment below, and of that above it is not for me to speak. We shall stand condemned in our own consciences, by our own constituents, and by our own country. The measure may be defeated. I have been aware that its passage for many days was not absolutely certain. From the first to the last, I hoped and believed it would pass, because from the first to the last I believed it was founded on the principles of just and righteous concession, of mutual conciliation. I believe that it deals unjustly by no part of the Republic, that it saves their honor, and, as far as it is dependent upon Congress, saves the interests of all quarters of the country. But, sir, I have known that the decision of its fate depended upon four or five votes in the Senate of the United States, whose ultimate judgment we could not count upon the one side or the other with absolute certainty. Its fate is now committed to the Senate, and to those five or six votes to which I have referred. It may be defeated. It is possible that, for the chastisement of our sins and transgressions, the rod of Providence may be still applied to us, may be still suspended over us. But, if defeated, it will be a triumph of ultraism and impracticability—a triumph of a most extraordinary conjunction of extremes; a victory won by abolitionism; a victory achieved by free-soilism; a victory of discord and agitation over peace and tranquillity; and I pray to Almighty God that it may not, in consequence of the inauspicious result, lead to the most unhappy and disastrous consequences to our beloved country.

(g) *J. G. Whittier: 'Ichabod'*

So fallen! so lost! the light withdrawn  
Which once he wore!  
The glory from his gray hairs gone  
Forevermore!

Reville him not, the Tempter hath  
A snare for all;  
And pitying tears, not scorn and wrath,  
Befit his fall!

Oh, dumb be passion's stormy rage,  
When he who might  
Have lighted up and led his age  
Falls back in night.

Scorn! would the angels laugh to mark  
A bright soul driven,  
Fiend-goaded, down the endless dark,  
From hope and heaven!

Let not the land once proud of him  
Insult him now.  
Nor brand with deeper shame his dim,  
Dishonored brow.

But let his humbled sons, instead,  
From sea to lake,  
A long lament, as for the dead,  
In sadness make.

Of all we loved and honored, naught  
Save power remains,  
A fallen angel's pride of thought,  
Still strong in chains

All else is gone; from those great eyes  
The soul has fled:  
When faith is lost, when honor dies,  
The man is dead!

Then, pay the reverence of old days  
To his dead fame;  
Walk backward, with averted gaze,  
And hide the shame.



## 22. THE KANSAS-NEBRASKA ACT, 1854

[In 1853, by the Gadsden Treaty, the United States purchased from Mexico a strip of territory through which it was intended to build a transcontinental railway line, known as the Southern Route. The route was opposed by commercial interests farther North, and Senator Douglas of Illinois, in order to promote the so-called Central Route from Saint Louis to San Francisco, proposed a Bill to organize the lands of the Middle West as the Territory of Nebraska. In order to secure Southern support he proposed also to introduce the principle of 'popular sovereignty' (sometimes called 'squatter sovereignty'), by which the people of the new Territory should decide for themselves whether or not slavery was to be permitted. As Nebraska would be north of the line  $36^{\circ} 30'$  this would entail the repeal of the Missouri Compromise. It was later decided to form out of the area in question two Territories, Kansas and Nebraska.

On 30 May 1854 the Act was approved by the President. A Northern Senator declared that 'it put Freedom and Slavery face to face and bade them grapple', and it led directly to the formation of the Republican Party.]

(The extracts given are from the sections affecting the issue of slavery.)

### *An Act to Organize the Territories of Nebraska and Kansas*

*Be it enacted . . .*, That all that part of the Territory of the United States included within the following limits, except such portions thereof as are hereinafter expressly exempted from the operations of this Act, to wit: beginning at a point in the Missouri River where the fortieth parallel of north latitude crosses the same; thence west on said parallel to the east boundary of the Territory of Utah, on the summit of the Rocky Mountains; thence on said summit northward to the forty-ninth parallel of north latitude; thence east on said parallel to the western boundary of the territory of Minnesota; thence southward on said boundary to the Missouri River; thence down the main channel of said river to the place of beginning, be, and the same is

hereby, created into a temporary government by the name of the Territory of Nebraska; and when admitted as a State or States, the said Territory, or any portion of the same, shall be received into the Union with or without slavery, as their constitution may prescribe at the time of their admission: . . .

SEC. 10. *And be it further enacted*, That the provisions of . . . [the Fugitive Slave Acts of 1793 and 1850] . . . be, and the same are hereby, declared to extend to and be in full force within the limits of said Territory of Nebraska. . . .

SEC. 14. *And be it further enacted*. . . That the Constitution, and all laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory of Nebraska as elsewhere within the United States, except the eighth section of the Act preparatory to the admission of Missouri into the Union, approved 6 March 1820, which, being inconsistent with the principle of non-intervention by Congress with slavery in the States and Territories, as recognized by the legislation of eighteen hundred and fifty, commonly called the Compromise Measures, is hereby declared inoperative and void; it being the true intent and meaning of this Act not to legislate slavery into any Territory or State, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States: *Provided*, That nothing herein contained shall be construed to revive or put in force any law or regulation which may have existed prior to the Act of 6 March 1820, either protecting, establishing, prohibiting, or abolishing slavery. . . .

SEC. 19. *And be it further enacted*, That all that part of the Territory of the United States included within the following limits, except such portions thereof as are hereinafter expressly exempted from the operations of this Act, to wit, beginning at a point on the western boundary of the State of Missouri, where the thirty-seventh parallel of north latitude crosses the same;

thence west on said parallel to the eastern boundary of New Mexico; thence north on said boundary to latitude thirty-eight; thence following said boundary westward to the east boundary of the Territory of Utah, on the summit of the Rocky Mountains; thence northward on said summit to the fortieth parallel of latitude; thence east on said parallel to the western boundary of the State of Missouri; thence south with the western boundary of said State to the place of beginning, be, and the same is hereby, created into a temporary government by the name of the Territory of Kansas; and when admitted as a State or States, the said Territory, or any portion of the same, shall be received into the Union with or without slavery, as their constitution may prescribe at the time of their admission: . . .

## 23. LINCOLN'S SPEECH AT PEORIA

16 OCTOBER 1854

[Douglas's principle of Squatter Sovereignty was bitterly attacked in his own State of Illinois, and on 3 October 1854 he defended his policy in a speech at Springfield. Lincoln, a rising politician in the State, answered him in two speeches, the first of which, delivered at Peoria on 16 October, first made him known outside his own State. In this he proclaimed his policy of defending the Union, even at the cost of permitting slavery in the South and accepting the Fugitive Slave Law.]

The repeal of the Missouri Compromise, and the propriety of its restoration, constitute the subject of what I am about to say. As I desire to present my own connected view of this subject, my remarks will not be specifically an answer to Judge Douglas; yet, as I proceed, the main points he has presented will arise, and will receive such respectful attention as I may be able to give them. I wish further to say that I do not propose to question the patriotism or to assail the

motives of any man or class of men, but rather to confine myself strictly to the naked merits of the question. I also wish to be no less than national in all the positions I may take, and whenever I take ground which others have thought, or may think, narrow, sectional, and dangerous to the Union, I hope to give a reason which will appear sufficient, at least to some, why I think differently.

And as this subject is no other than part and parcel of the larger general question of domestic slavery, I wish to make and to keep the distinction between the existing institution and the extension of it so broad and so clear that no honest man can misunderstand me, and no dishonest one successfully misrepresent me. . . .

This is the repeal of the Missouri Compromise. The foregoing history may not be precisely accurate in every particular, but I am sure it is sufficiently so for all the use I shall attempt to make of it, and in it we have before us the chief material enabling us to judge correctly whether the repeal of the Missouri Compromise is right or wrong. I think, and shall try to show, that it is wrong—wrong in its direct effect, letting slavery into Kansas and Nebraska, and wrong in its prospective principle, allowing it to spread to every other part of the wide world where men can be found inclined to take it.

This declared indifference, but, as I must think, covert real zeal, for the spread of slavery I cannot but hate. I hate it because of the monstrous injustice of slavery itself. I hate it because it deprives our republican example of its just influence in the world: enables the enemies of free institutions with plausibility to taunt us as hypocrites; causes the real friends of freedom to doubt our sincerity; and especially because it forces so many good men among ourselves into an open war with the very fundamental principles of civil liberty, criticizing the Declaration of Independence, and insisting that there is no right principle of action but self-interest.

Before proceeding, let me say that I think I have no

prejudice against the Southern people. They are just what we would be in their situation. If slavery did not now exist among them, they would not introduce it. If it did now exist among us, we should not instantly give it up. This I believe of the masses North and South. Doubtless there are individuals on both sides who would not hold slaves under any circumstances, and others who would gladly introduce slavery anew if it were out of existence. We know that some Southern men do free their slaves, go North and become tip-top Abolitionists, while some Northern ones go South and become most cruel slave-masters.

When Southern people tell us they are no more responsible for the origin of slavery than we are, I acknowledge the fact. When it is said that the institution exists, and that it is very difficult to get rid of it in any satisfactory way, I can understand and appreciate the saying. I surely will not blame them for not doing what I should not know how to do myself. If all earthly power were given me, I should not know what to do as to the existing institution. My first impulse would be to free all the slaves, and send them to Liberia, to their own native land. But a moment's reflection would convince me that whatever of high hope (as I think there is) there may be in this in the long run, its sudden execution is impossible. If they were all landed there in a day, they would all perish in the next ten days; and there are not surplus shipping and surplus money enough to carry them there in many times ten days. What then? Free them all, and keep them among us as underlings? Is it quite certain that this betters their condition? I think I would not hold one in slavery at any rate, yet the point is not clear enough for me to denounce people upon. What next? Free them, and make them politically and socially our equals. My own feelings will not admit of this, and if mine would, we well know that those of the great mass of whites will not. Whether this feeling accords with justice and sound judgment is not the sole question, if indeed it is any part of it. A universal feeling, whether

well or ill founded, cannot be safely disregarded. We cannot then make them equals. It does seem to me that systems of gradual emancipation might be adopted, but for their tardiness in this I will not undertake to judge our brethren of the South.

When they remind us of their constitutional rights, I acknowledge them—not grudgingly, but fully and fairly; and I would give them any legislation for the reclaiming of their fugitives which should not in its stringency be more likely to carry a free man into slavery than our ordinary criminal laws are to hang an innocent one.

But all this, to my judgment, furnishes no more excuse for permitting slavery to go into our own free territory than it would for reviving the African slave-trade by law. The law which forbids the bringing of slaves from Africa, and that which has so long forbidden the taking of them into Nebraska, can hardly be distinguished on any moral principle, and the repeal of the former could find quite as plausible excuses as that of the latter. . . .

But however this may be, we know the opening of new countries to slavery tends to the perpetuation of the institution, and so does keep men in slavery who would otherwise be free. This result we do not feel like favoring, and we are under no legal obligation to suppress our feelings in this respect.

Equal justice to the South, it is said, requires us to consent to the extension of slavery to new countries. That is to say, inasmuch as you do not object to my taking my hog to Nebraska, therefore I must not object to you taking your slave. Now, I admit that this is perfectly logical, if there is no difference between hogs and negroes. But while you thus require me to deny the humanity of the negro, I wish to ask whether you of the South, yourselves, have ever been willing to do as much? It is kindly provided that of all those who come into the world only a small percentage are natural tyrants. That percentage is no larger in the slave States than in the free. The great majority South, as well as North, have human sympathies, of which they can no more divest themselves than they can of their

sensibility to physical pain. These sympathies in the bosoms of the Southern people manifest, in many ways, their sense of the wrong of slavery, and their consciousness that, after all, there is humanity in the negro. If they deny this, let me address them a few plain questions. In 1820 you joined the North, almost unanimously, in declaring the African slave-trade piracy, and in annexing to it the punishment of death. Why did you do this? If you did not feel that it was wrong, why did you join in providing that men should be hung for it? The practice was no more than bringing wild negroes from Africa to such as would buy them. But you never thought of hanging men for catching and selling wild horses, wild buffaloes, or wild bears.

Again, you have among you a sneaking individual of the class of native tyrants known as the 'Slave-Dealer'. He watches your necessities, and crawls up to buy your slave, at a speculating price. If you cannot help it, you sell to him; but if you can help it, you drive him from your door. You despise him utterly. You do not recognize him as a friend, or even as an honest man. Your children must not play with his; they may rollick freely with the little negroes, but not with the slave-dealer's children. If you are obliged to deal with him, you try to get through the job without so much as touching him. It is common with you to join hands with the men you meet, but with the slave-dealer you avoid the ceremony—instinctively shrinking from the snaky contact. If he grows rich and retires from business, you still remember him, and still keep up the ban of non-intercourse upon him and his family. Now why is this? You do not so treat the man who deals in corn, cotton, or tobacco.

And yet again. There are in the United States and Territories, including the District of Columbia, 433,643 free blacks. At five hundred dollars per head they are worth over two hundred millions of dollars. How comes this vast amount of property to be running about without owners? We do not see free horses or free cattle running at large. How is this? All these free blacks are the

descendants of slaves, or have been slaves themselves; and they would be slaves now but for something which has operated on their white owners, inducing them at vast pecuniary sacrifice to liberate them. What is that something? Is there any mistaking it? In all these cases it is your sense of justice and human sympathy continually telling you that the poor negro has some natural right to himself—that those who deny it and make mere merchandise of him deserve kickings, contempt, and death.

And now why will you ask us to deny the humanity of the slave, and estimate him as only the equal of the hog? Why ask us to do what you will not do yourselves? Why ask us to do for nothing what two hundred millions of dollars could not induce you to do?

But one great argument in support of the repeal of the Missouri Compromise is still to come. That argument is 'the sacred right of self-government'. It seems our distinguished senator has found great difficulty in getting his antagonists, even in the Senate, to meet him fairly on this argument. Some poet has said:

Fools rush in where angels fear to tread.

At the hazard of being thought one of the fools of this quotation, I meet that argument—I rush in—I take that bull by the horns. I trust I understand and truly estimate the right of self-government. My faith in the proposition that each man should do precisely as he pleases with all which is exclusively his own lies at the foundation of the sense of justice there is in me. I extend the principle to communities of men as well as to individuals. I so extend it because it is politically wise, as well as naturally just: politically wise in saving us from broils about matters which do not concern us. Here, or at Washington, I would not trouble myself with the oyster laws of Virginia, or the cranberry laws of Indiana. The doctrine of self-government is right—absolutely and eternally right—but it has no just application as here attempted. Or perhaps I should rather say that whether it has such application depends



upon whether a negro is not or is a man. If he is not a man, in that case he who is a man may as a matter of self-government do just what he pleases with him. But if the negro is a man, is it not to that extent a total destruction of self-government to say that he too shall not govern himself? When the white man governs himself, that is self-government; but when he governs himself and also governs another man, that is more than self-government—that is despotism. If the negro is a man, why then my ancient faith teaches me that 'all men are created equal,' and that there can be no moral right in connection with one man's making a slave of another. . . .

But Nebraska is urged as a great Union-saving measure. Well, I too go for saving the Union. Much as I hate slavery, I would consent to the extension of it rather than see the Union dissolved, just as I would consent to any great evil to avoid a greater one. But when I go to Union-saving, I must believe, at least, that the means I employ have some adaptation to the end. To my mind, Nebraska has no such adaptation.

It hath no relish of salvation in it.

It is an aggravation, rather, of the only one thing which ever endangers the Union. When it came upon us, all was peace and quiet. The nation was looking to the forming of new bonds of union, and a long course of peace and prosperity seemed to lie before us. In the whole range of possibility there scarcely appears to me to have been anything out of which the slavery agitation could have been revived, except the very project of repealing the Missouri Compromise. Every inch of territory we owned already had a definite settlement of the slavery question, by which all parties were pledged to abide. Indeed, there was no uninhabited country on the continent which we could acquire, if we except some extreme northern regions which are wholly out of the question.

In this state of affairs the Genius of Discord himself

could scarcely have invented a way of again setting us by the ears but by turning back and destroying the peace measures of the past. The counsels of that Genius seem to have prevailed. The Missouri Compromise was repealed: and here we are in the midst of a new slavery agitation, such, I think, as we have never seen before. Who is responsible for this? Is it those who resist the measure, or those who causelessly brought it forward and pressed it through, having reason to know, and in fact knowing, it must and would be so resisted? It could not but be expected by its author that it would be looked upon as a measure for the extension of slavery, aggravated by a gross breach of faith.

Argue as you will and long as you will, this is the naked front and aspect of the measure. And in this aspect it could not but produce agitation. Slavery is founded in the selfishness of man's nature—opposition to it in his love of justice. These principles are an eternal antagonism, and when brought into collision so fiercely as slavery extension brings them, shocks and throes and convulsions must ceaselessly follow. Repeal the Missouri Compromise, repeal all compromises, repeal the Declaration of Independence, repeal all past history, you still cannot repeal human nature. It still will be the abundance of man's heart that slavery extension is wrong, and out of the abundance of his heart his mouth will continue to speak. . . .

In the course of my main argument, Judge Douglas interrupted me to say that the principle of the Nebraska bill was very old; that it originated when God made man, and placed good and evil before him, allowing him to choose for himself, being responsible for the choice he should make. At the time I thought this was merely playful, and I answered it accordingly. But in his reply to me he renewed it as a serious argument. In seriousness, then, the facts of this proposition are not true as stated. God did not place good and evil before man, telling him to make his choice. On the contrary, he did tell him there was one tree of the fruit of which he should not eat, upon pain of certain death. I should

scarcely wish so strong a prohibition against slavery in Nebraska.

But this argument strikes me as not a little remarkable in another particular—in its strong resemblance to the old argument for the 'divine right of kings'. By the latter, the king is to do just as he pleases with his white subjects, being responsible to God alone. By the former, the white man is to do just as he pleases with his black slaves, being responsible to God alone. The two things are precisely alike, and it is but natural that they should find similar arguments to sustain them.

I had argued that the application of the principle of self-government, as contended for, would require the revival of the African slave-trade; that no argument could be made in favor of a man's right to take slaves to Nebraska which could not be equally well made in favor of his right to bring them from the coast of Africa. The judge replied that the Constitution requires the suppression of the foreign slave-trade, but does not require the prohibition of slavery in the Territories. That is a mistake in point of fact. The Constitution does not require the action of Congress in either case, and it does authorize it in both. And so there is still no difference between the cases. . . .

In the course of his reply Senator Douglas remarked in substance that he had always considered this government was made for the white people and not for the negroes. Why, in point of mere fact, I think so too. But in this remark of the judge there is a significance which I think is the key to the great mistake (if there is any such mistake) which he has made in this Nebraska measure. It shows that the judge has no very vivid impression that the negro is human, and consequently has no idea that there can be any moral question in legislating about him. In his view the question of whether a new country shall be slave or free is a matter of as utter indifference as it is whether his neighbor shall plant his farm with tobacco or stock it with horned cattle. Now, whether this view is right or wrong, it is very certain that the great mass of mankind take a totally

different view. They consider slavery a great moral wrong, and their feeling against it is not evanescent, but eternal. It lies at the very foundation of their sense of justice, and it cannot be trifled with. It is a great and durable element of popular action, and I think no statesman can safely disregard it.

Our senator also objects that those who oppose him in this matter do not entirely agree with one another. He reminds me that in my firm adherence to the constitutional rights of the slave States I differ widely from others who are co-operating with me in opposing the Nebraska bill, and he says it is not quite fair to oppose him in this variety of ways. He should remember that he took us by surprise—astounded us by this measure. We were thunderstruck and stunned, and we reeled and fell in utter confusion. But we rose, each fighting, grasping whatever he could first reach—a scythe, a pitchfork, a chopping-ax, or a butcher's cleaver. We struck in the direction of the sound, and we were rapidly closing in upon him. He must not think to divert us from our purpose by showing us that our drill, our dress, and our weapons are not entirely perfect and uniform. When the storm shall be past he shall find us still Americans, no less devoted to the continued union and prosperity of the country than heretofore.

Finally, the judge invokes against me the memory of Clay and Webster. They were great men, and men of great deeds. But where have I assailed them? For what is it that their life-long enemy shall now make profit by assuming to defend them against me, their life-long friend? I go against the repeal of the Missouri Compromise; did they ever go for it? They went for the compromise of 1850; did I ever go against them? They were greatly devoted to the Union; to the small measure of my ability was I ever less so? Clay and Webster were dead before this question arose; by what authority shall our senator say they would espouse his side of it if alive? Mr Clay was the leading spirit in making the Missouri Compromise; is it very credible that if now alive he would take the lead in the breaking

of it? The truth is that some support from Whigs is now a necessity with the judge, and for this it is that the names of Clay and Webster are invoked. His old friends have deserted him in such numbers as to leave too few to live by. He came to his own, and his own received him not; and lo! he turns unto the Gentiles.

A word now as to the judge's desperate assumption that the compromises of 1850 had no connection with one another; that Illinois came into the Union as a slave State, and some other similar ones. This is no other than a bold denial of the history of the country. If we do not know that the compromises of 1850 were dependent on each other; if we do not know that Illinois came into the Union as a free State—we do not know anything. If we do not know these things, we do not know that we ever had a Revolutionary war or such a chief as Washington. To deny these things is to deny our national axioms—or dogmas, at least—and it puts an end to all argument. If a man will stand up and assert, and repeat and reassert, that two and two do not make four, I know nothing in the power of argument that can stop him. I think I can answer the judge so long as he sticks to the premises; but when he flies from them I cannot work any argument into the consistency of a mental gag and actually close his mouth with it. In such a case I can only commend him to the seventy thousand answers just in from Pennsylvania, Ohio, and Indiana.

#### 24. *THE DRED SCOTT CASE, 1857*

[Dred Scott was a negro slave, the property of Dr Emerson. In 1834 he was taken by his owner from Missouri into Illinois and two years later to Fort Snelling, which was in the area ceded in 1803 and north of the line 36° 30' fixed by the Missouri Enabling Act of 1820. In 1838 he was brought back to Missouri. In 1847 Scott brought a suit in the Missouri Circuit Court to recover his freedom, on the ground that he had twice resided in free territory. He won his case,

but the verdict was reversed in the Missouri Supreme Court. He passed to the ownership of Mr John Sandford and in 1853 claimed damages for illegal detention. In 1856 the case reached the United States Supreme Court. On 6 March 1857 Chief Justice Tancy delivered his judgement, which was supported by five other judges, while two dissented and one gave a judgement against the plaintiff without reference to the Missouri Enabling Act.

Dred Scott's claim to freedom was denied on three grounds, that as a negro he was not a citizen of the United States and so had no right to sue in a Federal Court, that as a resident of Missouri the laws of Illinois had no effect on his status, and that he had no right to freedom as a resident of territory north of 36° 30', since Congress had no right to deprive citizens of their property without due process of law.

This decision declared the Missouri Act of 1820 unconstitutional. The only way left to free the Territories from slavery was an Amendment of the Constitution, and it was out of the question that as many as three-quarters of the States would support this.]

TANEY, C.J. . . . There are two leading questions presented by the record:

1. Had the Circuit Court of the United States jurisdiction to hear and determine the case between these parties? And,

2. If it had jurisdiction, is the judgment it has given erroneous or not? . . .

The question to be decided is, whether the facts stated in the plea are sufficient to show that the plaintiff is not entitled to sue as a citizen in a court of the United States.

This is certainly a very serious question, and one that now for the first time has been brought for decision before this court. But it is brought here by those who have a right to bring it, and it is our duty to meet it and decide it.

The question is simply this: Can a negro, whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all

the rights, and privileges, and immunities, guarantied by that instrument to the citizen? One of which rights is the privilege of suing in a court of the United States in the cases specified in the Constitution.

It will be observed that the plea applies to that class of persons only whose ancestors were negroes of the African race, and imported into this country, and sold and held as slaves. The only matter in issue before the court, therefore, is, whether the descendants of such slaves, when they shall be emancipated, or who are born of parents who had become free before their birth, are citizens of a State, in the sense in which the word citizen is used in the Constitution of the United States. And this being the only matter in dispute on the pleadings, the court must be understood as speaking in this opinion of that class only, that is of persons who are the descendants of Africans who were imported into this country and sold as slaves. . . .

We proceed to examine the case as presented by the pleadings.

The words 'people of the United States' and 'citizens' are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the government through their representatives. They are what we familiarly call the 'sovereign people', and every citizen is one of this people, and a constituent member of this sovereignty. The question before us is, whether the class of persons described in the plea in abatement compose a portion of this people, and are constituent members of this sovereignty? We think they are not, and that they are not included, and were not intended to be included, under the word 'citizens' in the Constitution, and can, therefore, claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and whether emancipated or not, yet remained subject

to their authority, and had no rights or privileges but such as those who held the power and the government might choose to grant them. . . .

In discussing this question, we must not confound the rights of citizenship which a State may confer within its own limits, and the rights of citizenship as a member of the Union. It does not by any means follow, because he has all the rights and privileges of a citizen of a State, that he must be a citizen of the United States. He may have all of the rights and privileges of the citizen of a State, and yet not be entitled to the rights and privileges of a citizen in any other State. For, previous to the adoption of the Constitution of the United States, every State had the undoubted right to confer on whomsoever it pleased the character of a citizen, and to endow him with all its rights. But this character, of course, was confined to the boundaries of the State, and gave him no rights or privileges in other States beyond those secured to him by the laws of nations and the comity of States. Nor have the several States surrendered the power of conferring these rights and privileges by adopting the Constitution of the United States. Each State may still confer them upon an alien, or anyone it thinks proper, or upon any class or description of persons: yet he would not be a citizen in the sense in which that word is used in the Constitution of the United States, nor entitled to sue as such in one of its courts, nor to the privileges and immunities of a citizen in the other States. The rights which he would acquire would be restricted to the State which gave them. . . .

It is very clear, therefore, that no State can, by any Act or law of its own, passed since the adoption of the Constitution, introduce a new member into the political community created by the Constitution of the United States. It cannot make him a member of this community by making him a member of its own. And for the same reason it cannot introduce any person, or description of persons, who were not intended to be embraced in this new political family, which the



Constitution brought into existence, but were intended to be excluded from it.

The question then arises, whether the provisions of the Constitution, in relation to the personal rights and privileges to which the citizen of a State should be entitled, embraced the negro African race, at that time in this country, or who might afterwards be imported, who had then or should afterwards be made free in any State; and to put it in the power of a single State to make him a citizen of the United States, and endue him with the full rights of citizenship in every other State without their consent. Does the Constitution of the United States act upon him whenever he shall be made free under the laws of a State, and raised there to the rank of a citizen, and immediately cloth him with all the privileges of a citizen in every other State, and in its own courts?

The court think the affirmative of these propositions cannot be maintained. And if it cannot, the plaintiff in error could not be a citizen of the State of Missouri within the meaning of the Constitution of the United States. and, consequently, was not entitled to sue in its courts.

It is true, every person, and every class and description of persons, who were at the time of the adoption of the Constitution recognized as citizens in the several States, became also citizens of this new political body; but none other; it was formed by them, and for them and their posterity, but for no one else. And the personal rights and privileges guaranteed to citizens of this new sovereignty were intended to embrace those only who were then members of the several State communities, or who should afterwards, by birthright or otherwise, become members, according to the provisions of the Constitution and the principles on which it was founded. It was the union of those who were at that time members of distinct and separate political communities into one political family, whose power, for certain specified purposes, was to extend over the whole territory of the United States. And it gave to each

citizen rights and privileges outside of his State which he did not before possess, and placed him in every other State upon a perfect equality with its own citizens as to rights of person and rights of property; it made him a citizen of the United States.

It becomes necessary, therefore, to determine who were citizens of the several States when the Constitution was adopted. And in order to do this, we must recur to the governments and institutions of the thirteen Colonies when they separated from Great Britain and formed new sovereignties. . . . We must inquire who, at that time, were recognized as the people or citizens of a State. . . .

In the opinion of the court, the legislation and histories of the times, and the language used in the Declaration of Independence, show that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument. . . .

The legislation of the different Colonies furnishes positive and undisputable proof of this fact. . . .

The language of the Declaration of Independence is equally conclusive. . . .

This state of public opinion had undergone no change when the Constitution was adopted, as is equally evident from its provisions and language. . . .

The legislation of the States therefore shows, in a manner not to be mistaken, the inferior and subject condition of that race at the time the Constitution was adopted, and long afterwards, throughout the thirteen States by which that instrument was framed; and it is hardly consistent with the respect due to these States to suppose that they regarded at that time, as fellow-citizens and members of the sovereignty, a class of beings whom they had thus stigmatized; . . . More especially, it cannot be believed that the large slave-holding States regarded them as included in the word 'citizens', or would have consented to a constitution which might

compel them to receive them in that character from another State. For if they were so received, and entitled to the privileges and immunities of citizens, it would exempt them from the operation of the special laws and from the police regulations which they considered to be necessary for their own safety. . . . And all of this would be done in the face of the subject race of the same color, both free and slaves, inevitably producing discontent and insubordination among them, and endangering the peace and safety of the State. . . .

To all this mass of proof we have still to add that Congress has repeatedly legislated upon the same construction of the Constitution that we have given. . . .

But it is said that a person may be a citizen, and entitled to that character, although he does not possess all the rights which may belong to other citizens; as, for example, the right to vote, or to hold particular offices; and that yet, when he goes into another State, he is entitled to be recognized there as a citizen, although the State may measure his rights by the rights which it allows to persons of a like character or class, resident in the State, and refuse to him the full rights of citizenship.

This argument overlooks the language of the provision in the Constitution of which we are speaking.

Undoubtedly, a person may be a citizen, that is, a member of the community who form the sovereignty, although he exercises no share of the political power, and is incapacitated from holding particular offices. . . .

So, too, a person may be entitled to vote by the law of the State who is not a citizen even of the State itself. And in some of the States of the Union foreigners not naturalized are allowed to vote. And the State may give the right to free negroes and mulattoes, but that does not make them citizens of the State, and still less of the United States. And the provision in the Constitution giving privileges and immunities in other States does not apply to them.

Neither does it apply to a person who, being the citizen of a State, migrates to another State. For then

he becomes subject to the laws of the State in which he lives, and he is no longer a citizen of the State from which he removed. And the State in which he resides may then, unquestionably, determine his *status* or condition, and place him among the class of persons who are not recognized as citizens, but belong to an inferior and subject race; and may deny him the privileges and immunities enjoyed by its citizens. . . .

. . . But if he ranks as a citizen of the State to which he belongs, within the meaning of the Constitution of the United States, then, whenever he goes into another State, the Constitution clothes him, as to the rights of person, with all the privileges and immunities which belong to citizens of the State. And if persons of the African race are citizens of a State, and of the United States, they would be entitled to all of these privileges and immunities in every State, and the State could not restrict them; for they would hold these privileges and immunities under the paramount authority of the Federal Government, and its courts would be bound to maintain and enforce them, the Constitution and laws of the State to the contrary notwithstanding. . . . And if the State could limit or restrict them, or place the party in an inferior grade, this clause of the Constitution would be unmeaning, and could have no operation; and would give no rights to the citizen when in another State. He would have none but what the State itself chose to allow him. This is evidently not the construction or meaning of the clause in question. It guaranties rights to the citizen, and the State cannot withhold them. And these rights are of a character and would lead to consequences which make it absolutely certain that the African race were not included under the name of citizens of a State, and were not in the contemplation of the framers of the Constitution when these privileges and immunities were provided for the protection of the citizen in other States. . . .

And upon a full and careful consideration of the subject, the court is of opinion that, upon the facts

stated in the plea in abatement, Dred Scott was not a citizen of Missouri within the meaning of the Constitution of the United States, and not entitled as such to sue in its courts; and, consequently, that the Circuit Court had no jurisdiction of the case, and that the judgment on the plea in abatement is erroneous. . . .

We proceed, therefore, to inquire whether the facts relied on by the plaintiff entitled him to his freedom. . . .

In considering this part of the controversy, two questions arise: 1st. Was he, together with his family, free in Missouri by reason of the stay in the territory of the United States hereinbefore mentioned? And 2d, If they were not, is Scott himself free by reason of his removal to Rock Island, in the State of Illinois, as stated in the above admissions?

We proceed to examine the first question.

The Act of Congress, upon which the plaintiff relies, declares that slavery and involuntary servitude, except as a punishment for crime, shall be forever prohibited in all that part of the territory ceded by France, under the name of Louisiana, which lies north of thirty-six degrees thirty minutes north latitude, and not included within the limits of Missouri. And the difficulty which meets us at the threshold of this part of the inquiry is, whether Congress was authorized to pass this law under any of the powers granted to it by the Constitution; for if the authority is not given by that instrument, it is the duty of this court to declare it void and inoperative, and incapable of conferring freedom upon anyone who is held as a slave under the laws of any one of the States.

The counsel for the plaintiff has laid much stress upon that article in the Constitution which confers on Congress the power 'to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States'; but, in the judgment of the court, that provision has no bearing on the present controversy, and the power there given, whatever it may be, is confined, and was intended to be confined, to the territory which at that time belonged

to, or was claimed by, the United States, and was within their boundaries as settled by the treaty with Great Britain, and can have no influence upon a territory afterwards acquired from a foreign Government. It was a special provision for a known and particular territory, and to meet a present emergency, and nothing more. . . .

It seems, however, to be supposed that there is a difference between property in a slave and other property, and that different rules may be applied to it in expounding the Constitution of the United States. And the laws and usages of nations, and the writings of eminent jurists upon the relation of master and slave and their mutual rights and duties, and the powers which governments may exercise over it, have been dwelt upon in the argument. . . .

And if the Constitution recognizes the right of property of the master in a slave, and makes no distinction between that description of property and other property owned by a citizen, no tribunal, acting under the authority of the United States, whether it be legislative, executive, or judicial, has a right to draw such a distinction, or deny to it the benefit of the provisions and guarantees which have been provided for the protection of private property against the encroachments of the Government.

Now . . . the right of property in a slave is distinctly and expressly affirmed in the Constitution. The right to traffic in it, like an ordinary article of merchandise and property, was guaranteed to the citizens of the United States, in every State that might desire it, for twenty years. And the Government in express terms is pledged to protect it in all future time, if the slave escapes from his owner. . . . And no word can be found in the Constitution which gives Congress a greater power over slave property, or which entitles property of that kind to less protection than property of any other description. The only power conferred is the power coupled with the duty of guarding and protecting the owner in his rights.

Upon these considerations, it is the opinion of the court that the Act of Congress which prohibited a citizen from holding and owning property of this kind in the territory of the United States north of the line therein mentioned is not warranted by the Constitution, and is therefore void; and that neither Dred Scott himself, nor any of his family, were made free by being carried into this territory; even if they had been carried there by the owner, with the intention of becoming a permanent resident. . . .

Upon the whole, therefore, it is the judgment of this court that it appears by the record before us that the plaintiff in error is not a citizen of Missouri, in the sense in which that word is used in the Constitution; and that the Circuit Court of the United States, for that reason, had no jurisdiction in the case, and could give no judgment in it.

Its judgment for the defendant must, consequently, be reversed, and a mandate issued directing the suit to be dismissed for want of jurisdiction.

## 25. THE LINCOLN-DOUGLAS DEBATES, 1858

[In 1858 Douglas stood again for election as Senator representing Illinois, and Lincoln was nominated as the candidate of the Republican opposition. In his speech accepting nomination at Springfield on 17 June 1858 Lincoln stated his policy clearly, that the Government of the Union could not endure permanently half slave and half free. This was followed by seven joint debates between the two candidates. At Freeport, on 27 August, Lincoln put to Douglas his famous question, whether after the *Dred Scott* decision there was any way in which the people of a Territory could exclude slavery. Douglas answered this by the so-called 'Freeport doctrine', that it would be open to the legislature of any Territory to exclude slavery by failing to pass any police regulations to enforce it. By posing this question Lincoln lost the election to Douglas, but he did so

knowingly, meaning to make impossible the nomination of Douglas as Democratic candidate for the Presidency in the 1860 election, and so to split the Democratic Party. For the Democrats of the Southern States would never accept a candidate who had declared in this way against the *Dred Scott* decision. 'I am killing larger game,' he said to those who warned him that the question would present Douglas with the election, 'the great battle of 1860 is worth a thousand of this senatorial race.']

(a) *Lincoln's Springfield Speech, 17 June 1858*

Mr President and Gentlemen of the Convention: If we could first know where we are, and whither we are tending, we could better judge what to do, and how to do it. We are now far into the fifth year since a policy was initiated with the avowed object and confident promise of putting an end to slavery agitation. Under the operation of that policy, that agitation has not only not ceased, but has constantly augmented. In my opinion, it will not cease until a crisis shall have been reached and passed. 'A house divided against itself cannot stand.' I believe this Government cannot endure permanently half slave and half free. I do not expect the Union to be dissolved—I do not expect the house to fall—but I do expect it will cease to be divided. It will become all one thing, or all the other. Either the opponents of slavery will arrest the further spread of it, and place it where the public mind shall rest in the belief that it is in the course of ultimate extinction; or its advocates will push it forward till it shall become alike lawful in all the States, old as well as new, North as well as South. . . .

It should not be overlooked that, by the Nebraska bill, the people of a State as well as Territory were to be left 'perfectly free', 'subject only to the Constitution'. Why mention a State? They were legislating for Territories, and not for or about States. Certainly the people of a State are and ought to be subject to the Constitution of the United States; but why is mention of this lugged into this merely territorial law? Why are



the people of a Territory and the people of a State therein lumped together, and their relation to the Constitution therein treated as being precisely the same? While the opinion of the court, by Chief Justice Taney, in the *Dred Scott* case, and the separate opinions of all the concurring judges, expressly declare that the Constitution of the United States neither permits Congress nor a territorial legislature to exclude slavery from any United States Territory, they all omit to declare whether or not the same Constitution permits a State, or the people of a State, to exclude it. Possibly this is a mere omission; but who can be quite sure, if McLean or Curtis had sought to get into the opinion a declaration of unlimited power in the people of a State to exclude slavery from their limits, just as Chase and Mace sought to get such declaration, in behalf of the people of a Territory, into the Nebraska bill—I ask, who can be quite sure that it would not have been voted down in the one case as it had been in the other? The nearest approach to the point of declaring the power of a State over slavery is made by Judge Nelson. He approaches it more than once, using the precise idea, and almost the language too, of the Nebraska Act. On one occasion his exact language is: ‘Except in cases where the power is restrained by the Constitution of the United States, the law of the State is supreme over the subject of slavery within its jurisdiction.’ In what cases the power of the States is so restrained by the United States Constitution is left an open question, precisely as the same question as to the restraint on the power of the Territories was left open in the Nebraska Act. Put this and that together, and we have another nice little niche, which we may, ere long, see filled with another Supreme Court decision declaring that the Constitution of the United States does not permit a State to exclude slavery from its limits. And this may especially be expected if the doctrine of ‘care not whether slavery be voted down or voted up’ shall gain upon the public mind sufficiently to give promise that such a decision can be maintained when made.

Such a decision is all that slavery now lacks of being alike lawful in all the States. Welcome, or unwelcome, such decision is probably coming, and will soon be upon us, unless the power of the present political dynasty shall be met and overthrown. We shall lie down pleasantly dreaming that the people of Missouri are on the verge of making their State free, and we shall awake to the reality instead that the Supreme Court has made Illinois a slave State. To meet and overthrow the power of that dynasty is the work now before all those who would prevent that consummation. That is what we have to do. How can we best do it?

There are those who denounce us openly to their own friends, and yet whisper us softly that Senator Douglas is the aptest instrument there is with which to effect that object. They wish us to infer all from the fact that he now has a little quarrel with the present head of the dynasty; and that he has regularly voted with us on a single point upon which he and we have never differed. They remind us that he is a great man, and that the largest of us are very small ones. Let this be granted. But 'a living dog is better than a dead lion'. Judge Douglas, if not a dead lion for this work, is at least a caged and toothless one. How can he oppose the advances of slavery? He don't care anything about it. His avowed mission is impressing the 'public heart' to care nothing about it. A leading Douglas Democratic newspaper thinks Douglas's superior talent will be needed to resist the revival of the African slave-trade. Does Douglas believe an effort to revive that trade is approaching? He has not said so. Does he really think so? But if it is, how can he resist it? For years he has labored to prove it a sacred right of white men to take negro slaves into the new Territories. Can he possibly show that it is less a sacred right to buy them where they can be bought cheapest? And unquestionably they can be bought cheaper in Africa than in Virginia. He has done all in his power to reduce the whole question of slavery to one of a mere right of property; and as such, how can he oppose the foreign

slave-trade. How can he refuse that trade in that 'property' shall be 'perfectly free', unless he does it as a protection to the home production? And as the home producers will probably not ask the protection, he will be wholly without a ground of opposition.

Senator Douglas holds, we know, that a man may rightfully be wiser to-day than he was yesterday—that he may rightfully change when he finds himself wrong. But can we, for that reason, run ahead, and infer that he will make any particular change of which he, himself, has given no intimation? Can we safely base our action upon any such vague inference? Now, as ever, I wish not to misrepresent Judge Douglas's position, question his motives, or do aught that can be personally offensive to him. Whenever, if ever, he and we can come together on principle so that our great cause may have assistance from his great ability, I hope to have interposed no adventitious obstacle. But clearly he is not now with us—he does not pretend to be—he does not promise ever to be.

Our cause, then, must be intrusted to, and conducted by, its own undoubted friends—those whose hands are free, whose hearts are in the work, who do care for the result. Two years ago the Republicans of the nation mustered over thirteen hundred thousand strong. We did this under the single impulse of resistance to a common danger, with every external circumstance against us. Of strange, discordant, and even hostile elements, we gathered from the four winds, and formed and fought the battle through, under the constant hot fire of a disciplined, proud, and pampered enemy. Did we brave all then to falter now?—now, when that same enemy is wavering, dissevered, and belligerent? The result is not doubtful. We shall not fail—if we stand firm, we shall not fail. Wise counsels may accelerate or mistakes delay it, but, sooner or later, the victory is sure to come.

(b) *Lincoln's Freeport Speech, 27 August 1858*

. . . I now proceed to propound to the judge the interrogatories so far as I have framed them. I will bring forward a new instalment when I get them ready. I will bring them forward now, only reaching to number four.

The first one is :

Question 1. If the people of Kansas shall, by means entirely unobjectionable in all other respects, adopt a State constitution, and ask admission into the Union under it, before they have the requisite number of inhabitants according to the English bill—some ninety-three thousand—will you vote to admit them?

Q. 2. Can the people of a United States Territory, in any lawful way, against the wish of any citizen of the United States, exclude slavery from its limits prior to the formation of a State constitution?

Q. 3. If the Supreme Court of the United States shall decide that States cannot exclude slavery from their limits, are you in favor of acquiescing in, adopting, and following such decision as a rule of political action?

Q. 4. Are you in favor of acquiring additional territory in disregard of how such acquisition may affect the nation on the slavery question? . . .

(c) *Douglas's Freeport Speech, 27 August 1858*

. . . In a few moments I will proceed to review the answers which he has given to these interrogatories, but in order to relieve his anxiety I will first respond to these which he has presented to me. Mark you, he has not presented interrogatories which have ever received the sanction of the party with which I am acting, and hence he has no other foundation for them than his own curiosity.

First, he desires to know if the people of Kansas shall form a constitution by means entirely proper and unobjectionable and ask admission into the Union as a State before they have the requisite population for

a member of Congress, whether I will vote for that admission. Well, now, I regret exceedingly that he did not answer that interrogatory himself before he put it to me, in order that we might understand, and not be left to infer, on which side he is. Mr Trumbull, during the last session of Congress, voted from the beginning to the end against the admission of Oregon, although a free State, because she had not the requisite population for a member of Congress. Mr Trumbull would not consent, under any circumstances, to let a State, free or slave, come into the Union until it had the requisite population. As Mr Trumbull is in the field, fighting for Mr Lincoln, I would like to have Mr Lincoln answer his own question and tell me whether he is fighting Trumbull on that issue or not. But I will answer his question. In reference to Kansas, it is my opinion that as she has population enough to constitute a slave State, she has people enough for a free State. I will not make Kansas an exceptional case to the other States of the Union. I hold it to be a sound rule of universal application to require a Territory to contain the requisite population for a member of Congress before it is admitted as a State into the Union. I made that proposition in the Senate in 1856, and I renewed it during the last session, in a bill providing that no Territory of the United States should form a constitution and apply for admission until it had the requisite population. On another occasion I proposed that neither Kansas, nor any other Territory, should be admitted until it had the requisite population. Congress did not adopt any of my propositions containing this general rule, but did make an exception of Kansas. I will stand by that exception. Either Kansas must come in as a free State, with whatever population she may have, or the rule must be applied to all the other Territories alike. I therefore answer at once that, it having been decided that Kansas has people enough for a slave State, I hold that she has enough for a free State. I hope Mr Lincoln is satisfied with my answer; and now I would like to get his answer to his own

interrogatory—whether or not he will vote to admit Kansas before she has the requisite population. I want to know whether he will vote to admit Oregon before that Territory has the requisite population. Mr Trumbull will not, and the same reason that commits Mr Trumbull against the admission of Oregon commits him against Kansas, even if she should apply for admission as a free State. If there is any sincerity, any truth, in the argument of Mr Trumbull in the Senate, against the admission of Oregon because she had not 93,420 people, although her population was larger than that of Kansas, he stands pledged against the admission of both Oregon and Kansas until they have 93,420 inhabitants. I would like Mr Lincoln to answer this question. I would like him to take his own medicine. If he differs with Mr Trumbull, let him answer his argument against the admission of Oregon, instead of posing questions at me.

The next question propounded to me by Mr Lincoln is: Can the people of a Territory in any lawful way, against the wishes of any citizen of the United States, exclude slavery from their limits prior to the formation of a State constitution? I answer emphatically, as Mr Lincoln has heard me answer a hundred times from every stump in Illinois, that in my opinion the people of a Territory can, by lawful means, exclude slavery from their limits prior to the formation of a State constitution. Mr Lincoln knew that I had answered that question over and over again. He heard me argue the Nebraska bill on that principle all over the State in 1854, in 1855, and in 1856, and he has no excuse for pretending to be in doubt as to my position on that question. It matters not what way the Supreme Court may hereafter decide as to the abstract question whether slavery may or may not go into a Territory under the Constitution, the people have the lawful means to introduce it or exclude it as they please, for the reason that slavery cannot exist a day or an hour anywhere unless it is supported by local police regulations. Those police regulations can only be established by the local

legislature, and if the people are opposed to slavery they will elect representatives to that body who will by unfriendly legislation effectually prevent the introduction of it into their midst. If, on the contrary, they are for it, their legislation will favor its extension. Hence, no matter what the decision of the Supreme Court may be on that abstract question, still the right of the people to make a slave Territory or a free Territory is perfect and complete under the Nebraska bill. I hope Mr Lincoln deems my answer satisfactory on that point. . . .

The third question which Mr Lincoln presented is, if the Supreme Court of the United States shall decide that a State of this Union cannot exclude slavery from its own limits, will I submit to it? I am amazed that Lincoln should ask such a question. ['A schoolboy knows better.'] Yes, a schoolboy does know better. Mr Lincoln's object is to cast an imputation upon the Supreme Court. He knows that there never was but one man in America claiming any degree of intelligence or decency who ever for a moment pretended such a thing. It is true that the *Washington Union*, in an article published on the 17th of last December, did put forth that doctrine, and I denounced the article on the floor of the Senate in a speech which Mr Lincoln now pretends was against the President. The *Union* had claimed that slavery had a right to go into the free States, and that any provision in the constitution or laws of the free States to the contrary was null and void. I denounced it in the Senate, as I said before, and I was the first man who did. Lincoln's friends, Trumbull, and Seward, and Hale, and Wilson, and the whole Black Republican side of the Senate were silent. They left it to me to denounce it. And what was the reply made to me on that occasion? Mr Toombs, of Georgia, got up and undertook to lecture me on the ground that I ought not to have deemed the article worthy of notice, and ought not to have replied to it; that there was not one man, woman, or child south of the Potomac, in any slave State, who did not repudiate any such pretension. Mr Lincoln knows that that reply was made

on the spot, and yet now he asks this question. He might as well ask me, suppose Mr Lincoln should steal a horse, would I sanction it? and it would be as genteel in me to ask him, in the event he stole a horse, what ought to be done with him. He casts an imputation upon the Supreme Court of the United States by supposing that they would violate the Constitution of the United States. I tell him that such a thing is not possible. It would be an act of moral treason that no man on the bench could ever descend to. Mr Lincoln himself would never in his partizan feelings so far forget what was right as to be guilty of such an act.

The fourth question of Mr Lincoln is: Are you in favor of acquiring additional territory, in disregard as to how such acquisition may affect the Union on the slavery question? This question is very ingeniously and cunningly put.

The Black Republican creed lays it down expressly that under no circumstances shall we acquire any more territory unless slavery is first prohibited in the country. I ask Mr Lincoln whether he is in favor of that proposition. Are you [addressing Mr Lincoln] opposed to the acquisition of any more territory, under any circumstances, unless slavery is prohibited in it? That he does not like to answer. When I ask him whether he stands up to that article in the platform of his party, he turns, Yankee-fashion, and, without answering it, asks me whether I am in favor of acquiring territory without regard to how it may affect the Union on the slavery question. I answer that whenever it becomes necessary, in our growth and progress, to acquire more territory, that I am in favor of it, without reference to the question of slavery, and when we have acquired it I will leave the people free to do as they please, either to make it slave or free territory, as they prefer. It is idle to tell me or you that we have territory enough. Our fathers supposed that we had enough when our territory extended to the Mississippi River, but a few years' growth and expansion satisfied them that we needed more, and the Louisiana territory, from the west branch of the



Mississippi to the British possessions, was acquired. Then we acquired Oregon, then California and New Mexico. We have enough now for the present, but this is a young and a growing nation. It swarms as often as a hive of bees, and as new swarms are turned out each year, there must be hives in which they can gather and make their honey. In less than fifteen years, if the same progress that has distinguished this country for the last fifteen years continues, every foot of vacant land between this and the Pacific Ocean, owned by the United States, will be occupied. Will you not continue to increase at the end of fifteen years as well as now? I tell you, increase, and multiply, and expand, is the law of this nation's existence. You cannot limit this great republic by mere boundary lines, saying, 'Thus far shalt thou go, and no further.' Any one of you gentlemen might as well say to a son twelve years old that he is big enough, and must not grow any larger, and in order to prevent his growth put a hoop around him to keep him to his present size. What would be the result? Either the hoop must burst and be rent asunder, or the child must die. So it would be with this great nation. With our natural increase, growing with a rapidity unknown in any other part of the globe, with the tide of emigration that is fleeing from despotism in the Old World to seek refuge in our own, there is a constant torrent pouring into this country that requires more land, more territory upon which to settle, and just as fast as our interests and our destiny require additional territory in the North, in the South, or on the islands of the ocean, I am for it, and when we acquire it, will leave the people, according to the Nebraska bill, free to do as they please on the subject of slavery and every other question. . . .

(d) *Lincoln's Alton Speech, 15 October 1858*

. . . I have stated upon former occasions, and I may as well state again, what I understand to be the real issue of this controversy between Judge Douglas and myself. On the point of my wanting to make war between the

free and the slave States there has been no issue between us. So, too, when he assumes that I am in favor of introducing a perfect social and political equality between the white and black races. These are false issues, upon which Judge Douglas has tried to force the controversy. There is no foundation in truth for the charge that I maintain either of these propositions. The real issue in this controversy—the one pressing upon every mind—is the sentiment on the part of one class that looks upon the institution of slavery as a wrong, and of another class that does not look upon it as a wrong. The sentiment that contemplates the institution of slavery in this country as a wrong is the sentiment of the Republican Party. It is the sentiment around which all their actions, all their arguments, circle; from which all their propositions radiate. They look upon it as being a moral, social, and political wrong; and while they contemplate it as such, they nevertheless have due regard for its actual existence among us, and the difficulties of getting rid of it in any satisfactory way, and to all the constitutional obligations thrown about it. Yet having a due regard for these, they desire a policy in regard to it that looks to its not creating any more danger. They insist that it, as far as may be, be treated as a wrong, and one of the methods of treating it as a wrong is to make provision that it shall grow no larger. They also desire a policy that looks to a peaceful end of slavery some time, as being a wrong. These are the views they entertain in regard to it, as I understand them; and all their sentiments, all their arguments and propositions, are brought within this range. I have said, and I repeat it here, that if there be a man amongst us who does not think that the institution of slavery is wrong in any one of the aspects of which I have spoken, he is misplaced, and ought not to be with us. And if there be a man amongst us who is so impatient of it as a wrong as to disregard its actual presence among us and the difficulty of getting rid of it suddenly in a satisfactory way, and to disregard the constitutional obligations thrown about it, that man is

misplaced if he is on our platform. We disclaim sympathy with him in practical action. He is not placed properly with us.

On this subject of treating it as a wrong, and limiting its spread, let me say a word. Has anything ever threatened the existence of this Union save and except this very institution of slavery? What is it that we hold most dear amongst us? Our own liberty and prosperity. What has ever threatened our liberty and prosperity save and except this institution of slavery? If this is true, how do you propose to improve the condition of things by enlarging slavery—by spreading it out and making it bigger? You may have a wen or cancer upon your person, and not be able to cut it out lest you bleed to death; but surely it is no way to cure it to engraft it and spread it over your whole body. That is no proper way of treating what you regard as a wrong. You see this peaceful way of dealing with it as a wrong—restricting the spread of it, and not allowing it to go into new countries where it has not already existed. That is the peaceful way, the old-fashioned way, the way in which the fathers themselves set us the example.

On the other hand, I have said there is a sentiment which treats it as not being wrong. That is the Democratic sentiment of this day. I do not mean to say that every man who stands within that range positively asserts that it is right. That class will include all who positively assert that it is right, and all who, like Judge Douglas, treat it as indifferent, and do not say it is either right or wrong. These two classes of men fall within the general class of those who do not look upon it as a wrong. And if there be among you anybody who supposes that he, as a Democrat, can consider himself 'as much opposed to slavery as anybody', I would like to reason with him. You never treat it as a wrong. What other thing that you consider as a wrong do you deal with as you deal with that? Perhaps you say it is wrong, but your leader never does, and you quarrel with anybody who says it is wrong.

Although you pretend to say so yourself, you can find no fit place to deal with it as a wrong. You must not say anything about it in the free States, because it is not here. You must not say anything about it in the slave States, because it is there. You must not say anything about it in the pulpit, because that is religion, and has nothing to do with it. You must not say anything about it in politics, because that will disturb the security of 'my place'. There is no place to talk about it as being a wrong, although you say yourself it is a wrong. But finally you will screw yourself up to the belief that if the people of the slave States should adopt a system of gradual emancipation on the slavery question, you would be in favor of it. You would be in favor of it! You say that is getting it in the right place, and you would be glad to see it succeed. But you are deceiving yourself. You all know that Frank Blair and Gratz Brown, down there in St Louis, undertook to introduce that system in Missouri. They fought as valiantly as they could for the system of gradual emancipation which you pretend you would be glad to see succeed. Now I will bring you to the test. After a hard fight, they were beaten; and when the news came over here, you threw up your hats and hurrahed for Democracy. More than that, take all the argument made in favor of the system you have proposed, and it carefully excludes the idea that there is anything wrong in the institution of slavery. The arguments to sustain that policy carefully exclude it. Even here to-day you heard Judge Douglas quarrel with me because I uttered a wish that it might some time come to an end. Although Henry Clay could say he wished every slave in the United States was in the country of his ancestors, I am denounced by those pretending to respect Henry Clay for uttering a wish that it might some time, in some peaceful way, come to an end.

The Democratic policy in regard to that institution will not tolerate the merest breath, the slightest hint, of the least degree of wrong about it. Try it by some

of Judge Douglas's arguments. He says he 'don't care whether it is voted up or voted down' in the Territories. I do not care myself, in dealing with that expression, whether it is intended to be expressive of his individual sentiments on the subject or only of the national policy he desires to have established. It is alike valuable for my purpose. Any man can say that who does not see anything wrong in slavery, but no man can logically say it who does see a wrong in it; because no man can logically say he don't care whether a wrong is voted up or voted down. He may say he don't care whether an indifferent thing is voted up or down, but he must logically have a choice between a right thing and a wrong thing. He contends that whatever community wants slaves has a right to have them. So they have if it is not a wrong. But if it is a wrong, he cannot say people have a right to do wrong. He says that, upon the score of equality, slaves should be allowed to go into a new Territory like other property. This is strictly logical if there is no difference between it and other property. If it and other property are equal, his argument is entirely logical. But if you insist that one is wrong and the other right, there is no use to institute a comparison between right and wrong. You may turn over everything in the Democratic policy from beginning to end, whether in the shape it takes on the statute-book, in the shape it takes in the *Dred Scott* decision, in the shape it takes in conversation, or the shape it takes in short maxim-like arguments—it everywhere carefully excludes the idea that there is anything wrong in it.

That is the real issue. That is the issue that will continue in this country when these poor tongues of Judge Douglas and myself shall be silent. It is the eternal struggle between these two principles—right and wrong—throughout the world. They are the two principles that have stood face to face from the beginning of time; and will ever continue to struggle. The one is the common right of humanity, and the other the divine right of kings. It is the same principle in what-

ever shape it develops itself. It is the same spirit that says, 'You toil and work and earn bread, and I'll eat it.' No matter in what shape it comes, whether from the mouth of a king who seeks to bestride the people of his own nation and live by the fruit of their labor, or from one race of men as an apology for enslaving another race, it is the same tyrannical principle. I was glad to express my gratitude at Quincy, and I re-express it here to Judge Douglas—that he looks to no end of the institution of slavery. That will help the people to see where the struggle really is. It will hereafter place with us all men who really do wish the wrong may have an end. And whenever we can get rid of the fog which obscures the real question—when we can get Judge Douglas and his friends to avow a policy looking to its perpetuation—we can get out from among them that class of men and bring them to the side of those who treat it as a wrong. Then there will soon be an end of it, and that end will be its 'ultimate extinction'. Whenever the issue can be distinctly made, and all extraneous matter thrown out, so that men can fairly see the real difference between the parties, this controversy will soon be settled, and it will be done peaceably too. There will be no war, no violence. It will be placed again where the wisest and best men of the world placed it. . . .

## 26. JOHN BROWN'S LAST SPEECH, 1859

[The principle of Squatter Sovereignty, which was to permit the people of the Territory of Kansas to decide for themselves whether they would be slave or free, led to planned immigration by supporters of the two causes and to something like civil war in the district. Among the more violent supporters of the cause of the Abolitionists was John Brown of Connecticut. He devised a plan for founding a refuge for negro slaves in the Appalachian Mountains and, on 16 October 1859, at the head of a tiny band of thirteen whites and five negroes, he seized the Federal arsenal at

Harper's Ferry. The Governor called in the aid of Federal troops under Colonel Robert E. Lee, and Brown was captured after a fierce struggle. He was tried for murder and treason, condemned to death, and hanged on 2 December 1859. This exploit and John Brown's heroic demeanour at his trial made his name a rallying-cry for the extreme opponents of Slavery. The South saw in the episode proof that Abolitionism would lead inevitably to a servile insurrection.]

I have, may it please the Court, a few words to say.

In the first place, I deny everything but what I have all along admitted—the design on my part to free the slaves. I intended certainly to have made a clean thing of that matter, as I did last winter, when I went into Missouri and there took slaves without the snapping of a gun on either side, moved them through the country, and finally left them in Canada. I designed to have done the same thing again, on a larger scale. That was all I intended. I never did intend murder, or treason, or the destruction of property, or to excite or incite slaves to rebellion, or to make insurrection.

I have another objection; and that is, it is unjust that I should suffer such a penalty. Had I interfered in the manner which I admit, and which I admit has been fairly proved (for I admire the truthfulness and candor of the greater portion of the witnesses who have testified in this case)—had I so interfered in behalf of the rich, the powerful, the intelligent, the so-called great, or in behalf of any of their friends—either father, mother, brother, sister, wife, or children, or any of that class—and suffered and sacrificed what I have in this interference, it would have been all right; and every man in this court would have deemed it an act worthy of reward rather than punishment.

This court acknowledges, as I suppose, the validity of the law of God. I see a book kissed here which I suppose to be the Bible, or at least the New Testament. That teaches me that all things whatsoever I would that men should do to me, I should do even so to them. It teaches me, further, to 'remember them that are in bonds, as bound with them'. I endeavored to act up

to that instruction. I say, I am yet too young to understand that God is any respecter of persons. I believe that to have interfered as I have done—as I have always freely admitted I have done—in behalf of His despised poor, was not wrong, but right. Now, if it is deemed necessary that I should forfeit my life for the furtherance of the ends of justice, and mingle my blood further with the blood of my children and with the blood of millions in this slave country whose rights are disregarded by wicked, cruel, and unjust enactments—I submit; so let it be done!

Let me say one word further.

I feel entirely satisfied with the treatment I have received on my trial. Considering all the circumstances, it has been more generous than I expected. But I feel no consciousness of guilt. I have stated from the first what was my intention and what was not. I never had any design against the life of any person, nor any disposition to commit treason, or excite slaves to rebel, or make any general insurrection. I never encouraged any man to do so, but always discouraged any idea of that kind.

Let me say, also, a word in regard to the statements made by some of those connected with me. I hear it has been stated by some of them that I have induced them to join me. But the contrary is true. I do not say this to injure them, but as regretting their weakness. There is not one of them but joined me of his own accord, and the greater part of them at their own expense. A number of them I never saw, and never had a word of conversation with, till the day they came to me; and that was for the purpose I have stated.

Now I have done.



## 27. THE SOUTH CAROLINA ORDINANCE OF SECESSION, 1860

[At the Presidential Election of 1860 Abraham Lincoln was elected by an absolute majority of electoral votes, though not of popular votes, largely as a result of the split in the Democratic Party. The legislature of South Carolina then summoned a Convention which, on 20 December 1860, passed unanimously an Ordinance of Secession.]

*An Ordinance to Dissolve the Union between the State of South Carolina and other States united with her under the compact entitled the Constitution of the United States of America:*

We, the people of the State of South Carolina, in Convention assembled, do declare and ordain, and it is hereby declared and ordained, that the ordinance adopted by us in Convention, on the 23rd day of May, in the year of our Lord 1788, whereby the Constitution of the United States of America was ratified, and also all Acts and parts of Acts of the General Assembly of this State ratifying the amendments of the said Constitution, are hereby repealed, and that the union now subsisting between South Carolins and other States under the name of the United States of America is hereby dissolved.

## 28. ALEXANDER STEPHENS' 'CORNER- STONE' SPEECH, 1861

[Alexander Stephens had represented Georgia in the Senate from 1842 to 1859. He had been largely instrumental in persuading the Southern States to refrain from secession in 1850. In 1860 he supported Douglas in the Presidential Election, and afterwards he had striven to defeat the movement for secession in Georgia. When he failed, he threw in his lot with the Confederacy, and he was elected its first Vice-President. His 'Corner-stone' Speech, delivered at

Savannah in February 1861, was the most outspoken avowal of the point of view that the Southern States stood for Slavery and that it was this question which had, before all others, caused their secession. It made a great impression in the North, and fostered the idea that this was, in fact, the sole reason for their action. It should be compared, however, with Jefferson Davis's Inaugural Address (No. 32), which gives at least as true a picture of the real issues.]

Allow me briefly to allude to some of these improvements. The question of building up class interests, or fostering one branch of industry to the prejudice of another under the exercise of the revenue power, which gave us so much trouble under the old Constitution, is put at rest forever under the new. We allow the imposition of no duty with a view of giving advantage to one class of persons, in any trade or business, over those of another. All, under our system, stand upon the same broad principles of perfect equality. Honest labor and enterprise are left free and unrestricted in whatever pursuit they may be engaged. This old thorn of the tariff, which was the cause of so much irritation in the old body politic, is removed forever from the new.

Again, the subject of internal improvements, under the power of Congress to regulate commerce, is put at rest under our system. The power, claimed by construction under the old Constitution, was at least a doubtful one; it rested solely upon construction. We of the South, generally apart from considerations of constitutional principles, opposed its exercise upon grounds of its inexpediency and injustice. Our opposition sprang from no hostility to commerce, or to all necessary aids for facilitating it. With us it was simply a question upon whom the burden should fall. In Georgia, for instance, we have done as much for the cause of internal improvements as any other portion of the country, according to population and means. We have stretched out lines of railroad from the seaboard to the mountains; dug down the hills, and filled up the valleys, at a cost of \$25,000,000. No State was in

greater need of such facilities than Georgia, but we did not ask that these works should be made by appropriations out of the common treasury. The cost of the grading, the superstructure, and the equipment of our roads was borne by those who had entered into the enterprise. Nay, more, not only the cost of the iron—no small item in the general cost—was borne in the same way, but we were compelled to pay into the common treasury several millions of dollars for the privilege of importing the iron, after the price was paid for it abroad. What justice was there in taking this money, which our people paid into the common treasury on the importation of our iron, and applying it to the improvement of rivers and harbors elsewhere? The true principle is to subject the commerce of every locality to whatever burdens may be necessary to facilitate it. If Charleston harbor needs improvement, let the commerce of Charleston bear the burden. This, again, is the broad principle of perfect equality and justice; and it is especially set forth and established in our new constitution.

Another feature to which I will allude is that the new constitution provides that cabinet ministers and heads of departments may have the privilege of seats upon the floor of the Senate and House of Representatives, may have the right to participate in the debates and discussions upon the various subjects of administration. I should have preferred that this provision should have gone further, and required the President to select his constitutional advisers from the Senate and House of Representatives. That would have conformed entirely to the practise in the British Parliament, which, in my judgment, is one of the wisest provisions in the British constitution. It is the only feature that saves that government. It is that which gives it stability in its facility to change its administration. Ours, as it is, is a great approximation to the right principle.

Another change in the constitution relates to the length of the tenure of the presidential office. In the new constitution it is six years instead of four, and the

President is rendered ineligible for a re-election. This is certainly a decidedly conservative change. It will remove from the incumbent all temptation to use his office or exert the powers confided to him for any objects of personal ambition. The only incentive to that higher ambition which should move and actuate one holding such high trusts in his hands will be the good of the people, the advancement, happiness, safety, honor, and true glory of the Confederacy.

But not to be tedious in enumerating the numerous changes for the better, allow me to allude to one other—though last, not least. The new constitution has put at rest forever all the agitating questions relating to our peculiar institution, African slavery as it exists amongst us, the proper status of the negro in our form of civilization. This was the immediate cause of the late rupture and present revolution. Jefferson, in his forecast, had anticipated this as the 'rock upon which the old Union would split'. He was right. What was conjecture with him is now a realized fact. But whether he fully comprehended the great truth upon which that rock stood and stands may be doubted. The prevailing ideas entertained by him and most of the leading statesmen at the time of the formation of the old Constitution were that the enslavement of the African was in violation of the laws of nature; that it was wrong in principle, socially, morally, and politically. It was an evil they knew not well how to deal with; but the general opinion of the men of that day was that, somehow or other, in the order of Providence, the institution would be evanescent and pass away. This idea, though not incorporated in the Constitution, was the prevailing idea at that time. The Constitution, it is true, secured every essential guaranty to the institution while it should last, and hence no argument can be justly urged against the constitutional guaranties thus secured, because of the common sentiment of the day. Those ideas, however, were fundamentally wrong. They rested upon the assumption of the equality of races. This was an error. It was a sandy foundation, and the

government built upon it fell when 'the storm came and the wind blew'.

Our new government is founded upon exactly the opposite idea; its foundations are laid, its corner-stone rests, upon the great truth that the negro is not equal to the white man, that slavery—subordination to the superior race—is his natural and normal condition.

This, our new government, is the first in the history of the world based upon this great physical, philosophical, and moral truth. This truth has been slow in the process of its development, like all other truths in the various departments of science. It has been so even amongst us. Many who hear me, perhaps, can recollect well that this truth was not generally admitted, even within their day. The errors of the past generation still clung to many as late as twenty years ago. Those at the North who still cling to these errors, with a zeal above knowledge, we justly denominate fanatics. All fanaticism springs from an aberration of the mind, from a defect in reasoning. It is a species of insanity. One of the most striking characteristics of insanity, in many instances, is forming correct conclusions from fancied or erroneous premises. So with the antislavery fanatics; their conclusions are right, if their premises were. They assume that the negro is equal, and hence conclude that he is entitled to equal rights and privileges with the white man. If their premises were correct, their conclusions would be logical and just; but, their premise being wrong, their whole argument fails. I recollect once hearing a gentleman from one of the Northern States, of great power and ability, announce in the House of Representatives, with imposing effect, that we of the South would be compelled ultimately to yield upon this subject of slavery, that it was as impossible to war successfully against a principle in politics as it was in physics or mechanics; that the principle would ultimately prevail; that we, in maintaining slavery as it exists with us, were warring against a principle, founded in nature, the principle of the equality of men. The reply I made to him was that

upon his own grounds we should ultimately succeed, and that he and his associates in this crusade against our institutions would ultimately fail. The truth announced, that it was as impossible to war successfully against a principle in politics as it was in physics and mechanics, I admitted; but told him that it was he, and those acting with him, who were warring against a principle. They were attempting to make things equal which the Creator had made unequal.

In the conflict, thus far, success has been on our side, complete throughout the length and breadth of the Confederate States. It is upon this, as I have stated, our social fabric is firmly planted; and I cannot permit myself to doubt the ultimate success of a full recognition of this principle throughout the civilized and enlightened world.

As I have stated, the truth of this principle may be slow in development, as all truths are and ever have been, in the various branches of science. It was so with the principles announced by Galileo. It was so with Adam Smith and his principles of political economy. It was so with Harvey and his theory of the circulation of the blood; it is stated that not a single one of the medical profession, living at the time of the announcement of the truths made by him, admitted them. Now they are universally acknowledged. May we not, therefore, look with confidence to the ultimate universal acknowledgment of the truths upon which our system rests? It is the first government ever instituted upon the principles in strict conformity to nature and the ordination of Providence in furnishing the materials of human society. Many governments have been founded upon the principle of the subordination and serfdom of certain classes of the same race, such were and are in violation of the laws of nature. Our system commits no such violation of nature's laws. With us, all the white race, however high or low, rich or poor, are equal in the eye of the law. Not so with the negro; subordination is his place. He, by nature or by the curse against Canaan, is fitted for that condition which he occupies

in our system. The architect, in the construction of buildings, lays the foundation with the proper material—the granite; then comes the brick or the marble. The substratum of our society is made of the material fitted by nature for it; and by experience we know that it is best not only for the superior race, but for the inferior race, that it should be so. It is, indeed, in conformity with the ordinance of the Creator. It is not for us to inquire into the wisdom of His ordinances or to question them. For his own purposes he has made one race to differ from another, as He has made ‘one star to differ from another star in glory’. The great objects of humanity are best attained when there is conformity to His laws and decrees, in the formation of governments as well as in all things else. Our Confederacy is founded upon principles in strict conformity with these views. This stone, which was rejected by the first builders, ‘is become the chief of the corner’, the real ‘corner-stone’ in our new edifice.

## 29. LINCOLN'S FIRST INAUGURAL ADDRESS

4 MARCH 1861

[When Lincoln made his first Inaugural Address war had not yet broken out. The Address was an impressive plea for moderation. It insisted on the inevitability of Union, and it promised respect for the rights of the slave-holders in the Slave States.

Lincoln showed his draft to Seward for criticism, and the latter proposed the final paragraph which Lincoln adopted with a few small alterations.]

Fellow-Citizens of the United States:—In compliance with a custom as old as the Government itself, I appear before you to address you briefly, and to take in your presence the oath prescribed by the Constitution of the United States to be taken by the President ‘before he enters on the execution of his office’.

I do not consider it necessary at present for me to discuss those matters of administration about which there is no special anxiety or excitement.

Apprehension seems to exist among the people of the Southern States that by the accession of a Republican administration their property and their peace and personal security are to be endangered. There has never been any reasonable cause for such apprehension. Indeed, the most ample evidence to the contrary has all the while existed and been open to their inspection. It is found in nearly all the published speeches of him who now addresses you. I do but quote from one of those speeches when I declare that 'I have no purpose, directly or indirectly, to interfere with the institution of slavery in the States where it exists. I believe I have no lawful right to do so, and I have no inclination to do so.' Those who nominated and elected me did so with full knowledge that I had made this and many similar declarations, and had never recanted them. And, more than this, they placed in the platform for my acceptance, and as a law to themselves and to me, the clear and emphatic resolution which I now read:

*Resolved*, That the maintenance inviolate in the rights of the States, and especially the right of each State to order and control its own domestic institutions according to its own judgment exclusively, is essential to that balance of power on which the perfection and endurance of our political fabric depend, and we denounce the lawless invasion by armed force of the soil of any State or Territory, no matter under what pretext, as among the gravest of crimes

I now reiterate these sentiments; and, in doing so, I only press upon the public attention the most conclusive evidence of which the case is susceptible, that the property, peace, and security of no section are to be in any wise endangered by the now incoming administration. I add, too, that all the protection which, consistently with the Constitution and the laws, can be given, will be cheerfully given to all the States when lawfully demanded, for whatever cause—as cheerfully to one section as to another.



There is much controversy about the delivering up of fugitives from service or labor. The clause I now read is as plainly written in the Constitution as any other of its provisions :

No person held to service or labor in one State, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein be discharged from such service or labor, but *shall be delivered up on claim of the party to whom such service or labor may be due.*

It is scarcely questioned that this provision was intended by those who made it for the reclaiming of what we call fugitive slaves ; and the intention of the lawgiver is the law. All members of Congress swear their support to the whole Constitution—to this provision as much as to any other. To the proposition, then, that slaves whose cases come within the terms of this clause ‘shall be delivered up’, their oaths are unanimous. Now, if they would make the effort in good temper, could they not with nearly equal unanimity frame and pass a law by means of which to keep good that unanimous oath?

There is some difference of opinion whether this clause should be enforced by national or by State authority ; but surely that difference is not a very material one. If the slave is to be surrendered, it can be of but little consequence to him or to others by which authority it is done. And should anyone in any case be content that his oath shall go unkept on a merely unsubstantial controversy as to how it shall be kept?

Again, in any law upon this subject, ought not all the safeguards of liberty known in civilized and humane jurisprudence to be introduced, so that a free man be not, in any case, surrendered as a slave? And might it not be well at the same time to provide by law for the enforcement of that clause in the Constitution which guarantees that ‘the citizen of each State shall be entitled to all privileges and immunities of citizens in the several States’?

I take the official oath to-day with no mental reservations, and with no purpose to construe the Con-

stitution or laws by any hypercritical rules. And, while I do not choose now to specify particular Acts of Congress as proper to be enforced, I do suggest that it will be much safer for all, both in official and private stations, to conform to and abide by all those Acts which stand unrepealed than to violate any of them, trusting to find impunity in having them held to be unconstitutional.

It is seventy-two years since the first inauguration of a President under our National Constitution. During that period fifteen different and greatly distinguished citizens have, in succession, administered the executive branch of the government. They have conducted it through many perils, and generally with great success. Yet, with all this scope of precedent, I now enter upon the same task for the brief constitutional term of four years under great and peculiar difficulty. A disruption of the Federal Union, heretofore only menaced, is now formidably attempted.

I hold that, in contemplation of universal law and of the Constitution, the Union of these States is perpetual. Perpetuity is implied, if not expressed, in the fundamental law of all national governments. It is safe to assert that no government proper ever had a provision in its organic law for its own termination. Continue to execute all the express provisions of our National Constitution, and the Union will endure forever—it being impossible to destroy it except by some action not provided for in the instrument itself.

Again, if the United States be not a government proper, but an association of States in the nature of contract merely, can it as a contract be peaceably unmade by less than all the parties who made it? One party to a contract may violate it—break it, so to speak: but does it not require all to lawfully rescind it?

Descending from these general principles, we find the proposition that in legal contemplation the Union is perpetual confirmed by the history of the Union itself. The Union is much older than the Constitution.

It was formed, in fact, by the Articles of Association in 1774. It was matured and continued by the Declaration of Independence in 1776. It was further matured, and the faith of all the then thirteen States expressly plighted and engaged that it should be perpetual, by the Articles of Confederation in 1778. And, finally, in 1787 one of the declared objects for ordaining and establishing the Constitution was 'to form a more perfect Union'.

But if the destruction of the Union by one or by a part only of the States be lawfully possible, the Union is less perfect than before the Constitution, having lost the vital element of perpetuity.

It follows from these views that no State upon its own mere motion can lawfully get out of the Union; that resolves and ordinances to that effect are legally void; and that acts of violence, within any State or States, against the authority of the United States are insurrectionary or revolutionary, according to circumstances.

I therefore consider that, in view of the Constitution and the laws, the Union is unbroken; and to the extent of my ability I shall take care, as the Constitution itself expressly enjoins upon me, that the laws of the Union be faithfully executed in all the States. Doing this I deem to be only a simple duty on my part; and I shall perform it so far as practicable, unless my rightful masters, the American people, shall withhold the requisite means, or in some authoritative manner direct the contrary. I trust this will not be regarded as a menacc, but only as the declared purpose of the Union that it will constitutionally defend and maintain itself.

In doing this there needs to be no bloodshed or violence; and there shall be none, unless it be forced upon the national authority. The power confided to me will be used to hold, occupy, and possess the property and places belonging to the Government, and to collect the duties and imposts; but beyond what may be necessary for these objects, there will be no invasion, no using of force against or among the people anywhere.

Where hostility to the United States, in any interior locality, shall be so great and universal as to prevent competent resident citizens from holding the Federal offices, there will be no attempt to force obnoxious strangers among the people for that object. While the strict legal right may exist in the government to enforce the exercise of these offices, the attempt to do so would be so irritating, and so nearly impracticable withal, that I deem it better to forego for the time the uses of such offices.

The mails, unless repelled, will continue to be furnished in all parts of the Union. So far as possible, the people everywhere shall have that sense of perfect security which is most favorable to calm thought and reflection. The course here indicated will be followed unless current events and experience shall show a modification or change to be proper, and in every case and exigency my best discretion will be exercised according to circumstances actually existing, and with a view and a hope of a peaceful solution of the national troubles and the restoration of fraternal sympathies and affections.

That there are persons in one section or another who seek to destroy the Union at all events, and are glad of any pretext to do it, I will neither affirm nor deny; but if there be such, I need address no word to them. To those, however, who really love the Union may I not speak?

Before entering upon so grave a matter as the destruction of our national fabric, with all its benefits, its memories, and its hopes, would it not be wise to ascertain precisely why we do it? Will you hazard so desperate a step while there is any possibility that any portion of the ills you fly from have no real existence? Will you, while the certain ills you fly to are greater than all the real ones you fly from—will you risk the commission of so fearful a mistake?

All profess to be content in the Union if all constitutional rights can be maintained. Is it true, then, that any right, plainly written in the Constitution, has been

denied? I think not. Happily the human mind is so constituted that no party can reach to the audacity of doing this. Think, if you can, of a single instance in which a plainly written provision of the Constitution has ever been denied. If by the mere force of numbers a majority should deprive a minority of any clearly written constitutional right, it might, in a moral point of view, justify revolution—certainly would if such a right were a vital one. But such is not our case. All the vital rights of minorities and of individuals are so plainly assured to them by affirmations and negations, guaranties and prohibitions, in the Constitution, that controversies never arise concerning them. But no organic law can ever be framed with a provision specifically applicable to every question which may occur in practical administration. No foresight can anticipate, nor any document of reasonable length contain, express provisions for all possible questions. Shall fugitives from labor be surrendered by national or by State authority? The Constitution does not expressly say. *May* Congress prohibit slavery in the Territories? The Constitution does not expressly say. *Must* Congress protect slavery in the Territories? The Constitution does not expressly say.

From questions of this class spring all our constitutional controversies, and we divide upon them into majorities and minorities. If the minority will not acquiesce, the majority must, or the Government must cease. There is no other alternative; for continuing the Government is acquiescence on one side or the other.

If a minority in such case will secede rather than acquiesce, they make a precedent which in turn will divide and ruin them; for a minority of their own will secede from them whenever a majority refuses to be controlled by such minority. For instance, why may not any portion of a new confederacy a year or two hence arbitrarily secede again, precisely as portions of the present Union now claim to secede from it? All who cherish disunion sentiments are now being educated to the exact temper of doing this.

Is there such perfect identity of interests among the States to compose a new Union as to produce harmony only, and prevent renewed secession?

Plainly, the central idea of secession is the essence of anarchy. A majority held in restraint by constitutional checks and limitations, and always changing easily with deliberate changes of popular opinions and sentiments, is the only true sovereign of a free people. Whoever rejects it does, of necessity, fly to anarchy or to despotism. Unanimity is impossible; the rule of a minority, as a permanent arrangement, is wholly inadmissible; so that, rejecting the majority principle, anarchy or despotism in some form is all that is left.

I do not forget the position assumed by some, that constitutional questions are to be decided by the Supreme Court; nor do I deny that such decisions must be binding, in any case, upon the parties to a suit, as to the object of that suit, while they are also entitled to a very high respect and consideration in all parallel cases by all other departments of the government. And, while it is obviously possible that such decision may be erroneous in any given case, still the evil effect following it, being limited to that particular case, with the chance that it may be overruled and never become a precedent for other cases, can better be borne than could the evils of a different practice. At the same time, the candid citizen must confess that if the policy of the government, upon vital questions affecting the whole people, is to be irrevocably fixed by decisions of the Supreme Court, the instant they are made, in ordinary litigation between parties in personal actions, the people will have ceased to be their own rulers, having to that extent practically resigned the government into the hands of that eminent tribunal. Nor is there in this view any assault upon the court or the judges. It is a duty from which they may not shrink to decide cases properly brought before them, and it is no fault of theirs if others seek to turn their decisions to political purposes.

One section of our country believes slavery is right,

and ought to be extended, while the other believes it is wrong, and ought not to be extended. This is the only substantial dispute. The fugitive slave clause of the Constitution and the law for the suppression of the foreign slave trade are each as well enforced, perhaps, as any law can ever be in a community where the moral sense of the people imperfectly supports the law itself. The great body of the people abide by the dry legal obligation in both cases, and a few break over in each. This, I think, cannot be perfectly cured; and it would be worse in both cases after the separation of the sections than before. The foreign slave trade, now imperfectly suppressed, would be ultimately revived, without restriction, in one section, while fugitive slaves, now only partially surrendered, would not be surrendered at all by the other.

Physically speaking, we cannot separate. We cannot remove our respective sections from each other, nor build an impassable wall between them. A husband and wife may be divorced and go out of the presence and beyond the reach of each other; but the different parts of our country cannot do this. They cannot but remain face to face, and intercourse, either amicable or hostile, must continue between them. Is it possible, then, to make that intercourse more advantageous or more satisfactory after separation than before? Can aliens make treaties easier than friends can make laws? Can treaties be more faithfully enforced between aliens than laws can among friends? Suppose you go to war, you cannot fight always; and when, after much loss on both sides, and no gain on either, you cease fighting, the identical old questions as to terms of intercourse are again upon you.

This country, with its institutions, belongs to the people who inhabit it. Whenever they shall grow weary of the existing government, they can exercise their constitutional right of amending it, or their revolutionary right to dismember or overthrow it. I cannot be ignorant of the fact that many worthy and patriotic citizens are desirous of having the national

Constitution amended. While I make no recommendation of amendments, I fully recognize the rightful authority of the people over the whole subject, to be exercised in either of the modes prescribed in the instrument itself, and I should, under existing circumstances, favor rather than oppose a fair opportunity being afforded the people to act upon it. I will venture to add that to me the convention mode seems preferable, in that it allows amendments to originate with the people themselves, instead of only permitting them to take or reject propositions originated by others not especially chosen for the purpose, and which might not be precisely such as they would wish to either accept or refuse. I understand a proposed amendment to the Constitution—which amendment, however, I have not seen—has passed Congress, to the effect that the Federal Government shall never interfere with the domestic institutions of the States, including that of persons held to service. To avoid misconstruction of what I have said, I depart from my purpose not to speak of particular amendments so far as to say that, holding such a provision to now be implied constitutional law, I have no objection to its being made express and irrevocable.

The chief magistrate derives all his authority from the people, and they have conferred none upon him to fix terms for the separation of the States. The people themselves can do this also if they choose; but the executive, as such, has nothing to do with it. His duty is to administer the present government, as it came to his hands, and to transmit it, unimpaired by him, to his successor.

Why should there not be a patient confidence in the ultimate justice of the people? Is there any better or equal hope in the world? In our present differences is either party without faith of being in the right? If the Almighty Ruler of nations, with His eternal truth and justice, be on your side of the North, or on yours of the South, that truth and that justice will surely prevail by the judgment of this great tribunal of the American people.



By the frame of the government under which we live, this same people have wisely given their public servants but little power for mischief; and have, with equal wisdom, provided for the return of that little to their own hands at very short intervals. While the people retain their virtue and vigilance, no administration, by any extreme of wickedness or folly, can very seriously injure the government in the short space of four years.

My countrymen, one and all, think calmly and well upon this whole subject. Nothing valuable can be lost by taking time. If there be an object to hurry any of you in hot haste to a step which you would never take deliberately, that object will be frustrated by taking time; but no good object can be frustrated by it. Such of you as are now dissatisfied still have the old Constitution unimpaired, and, on the sensitive point, the laws of your own framing under it; while the new administration will have no immediate power, if it would, to change either. If it were admitted that you who are dissatisfied hold the right side in the dispute, there still is no single good reason for precipitate action. Intelligence, patriotism, Christianity, and a firm reliance on Him who has never yet forsaken this favored land, are still competent to adjust in the best way all our present difficulty.

In your hands, my dissatisfied fellow-countrymen, and not in mine, is the momentous issue of civil war. The government will not assail you. You can have no conflict without being yourselves the aggressors. You have no oath registered in heaven to destroy the government, while I shall have the most solemn one to 'preserve, protect, and defend' it.

I am loath to close. We are not enemies, but friends. We must not be enemies. Though passion may have strained, it must not break, our bonds of affection. The mystic chords of memory, stretching from every battlefield and patriot grave to every living heart and hearthstone all over this broad land, will yet swell the chorus of the Union when again touched, as surely they will be, by the better angels of our nature.

### 30. THE CONSTITUTION OF THE CONFEDERATE STATES OF AMERICA, 1861

[The lead given by South Carolina in seceding from the Union was soon followed by Mississippi, Florida, Alabama, Georgia, Louisiana, and Texas. A Congress of the seceding States was opened at Montgomery, Alabama, on 8 February 1861, and a constitution adopted on 11 March.

The new constitution was based on that of the United States. The main differences reflected the causes of the dispute. Thus the right of owning slaves was expressly safeguarded, bounties and protective tariffs were forbidden, and Federal officials and judges might be impeached by the State legislatures. Two other changes would have been important if the Southern States had been able to preserve their Confederacy. Congress could only appropriate money if the President had transmitted the request, except by a two-thirds majority, and the heads of departments might be granted a seat in Congress and the right to take part in discussions.

Virginia joined the Confederate States in April and was followed in May by Arkansas, Tennessee, and North Carolina.]

(Only those clauses in the Constitution are given which include important differences from the Constitution of the United States.)

We, the people of the Confederate States, each State acting in its sovereign and independent character, in order to form a permanent federal government, establish justice, insure domestic tranquillity, and secure the blessings of liberty to ourselves and our posterity—invoking the favor and guidance of Almighty God—do ordain and establish this Constitution for the Confederate States of America.

#### ARTICLE I

SEC. 2. . . . (3) Representatives and direct taxes shall be apportioned among the several States which may be included within this Confederacy according to their respective numbers, which shall be determined by

adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all slaves. The actual enumeration shall be made within three years after the first meeting of the Congress of the Confederate States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every fifty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of South Carolina shall be entitled to choose six; the State of Georgia ten; the State of Alabama nine; the State of Florida two; the State of Mississippi seven; the State of Louisiana six; and the State of Texas six. . . .

(5) The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment; except that any judicial or other federal officer resident and acting solely within the limits of any State, may be impeached by a vote of two-thirds of both branches of the Legislature thereof. . . .

SEC. 6. . . . (2) No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the Confederate States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the Confederate States shall be a member of either House during his continuance in office. But Congress may, by law, grant to the principal officer in each of the Executive Departments a seat upon the floor of either House, with the privilege of discussing any measure appertaining to his department. . . .

SEC. 7. . . . (2) Every bill which shall have passed both Houses shall, before it becomes a law, be presented to the President of the Confederate States; if he approve he shall sign it; but if not, he shall return it with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal,

and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return; in which case it shall not be a law. The President may approve any appropriation and disapprove any other appropriation in the same bill. In such case he shall, in signing the bill, designate the appropriations disapproved; and shall return a copy of such appropriations, with his objections, to the House in which the bill shall have originated; and the same proceedings shall then be had as in case of other bills disapproved by the President. . . .

SEC. 8. The Congress shall have power—

(1) To lay and collect taxes, duties, imposts, and excises for revenue necessary to pay the debts, provide for the common defence, and carry on the government of the Confederate States; but no bounties shall be granted from the treasury; nor shall any duties or taxes on importations from foreign nations be laid to promote or foster any branch of industry; and all duties, imposts, and excises shall be uniform throughout the Confederate States. . . .

(3) To regulate commerce with foreign nations, and among the several States, and with the Indian tribes; but neither this, nor any other clause contained in the Constitution shall be construed to delegate the power to Congress to appropriate money for any internal improvement intended to facilitate commerce; except for the purpose of furnishing lights, beacons, and buoys, and other aids to navigation upon the coasts, and the

improvement of harbors, and the removing of obstructions in river navigation, in all which cases such duties shall be laid on the navigation facilitated thereby as may be necessary to pay the costs and expenses thereof.

(4) To establish uniform laws of naturalization, and uniform laws on the subject of bankruptcies throughout the Confederate States, but no law of Congress shall discharge any debt contracted before the passage of the same. . . .

SEC. 9. (1) The importation of negroes of the African race, from any foreign country, other than the slaveholding States or Territories of the United States of America, is hereby forbidden; and Congress is required to pass such laws as shall effectually prevent the same.

(2) Congress shall also have power to prohibit the introduction of slaves from any State not a member of, or Territory not belonging to, this Confederacy. . . .

(4) No bill of attainder, or *ex post facto* law, or law denying or impairing the right of property in negro slaves shall be passed. . . .

(6) No tax or duty shall be laid on articles exported from any State, except by a vote of two-thirds of both Houses. . . .

(9) Congress shall appropriate no money from the treasury except by a vote of two-thirds of both Houses, taken by yeas and nays, unless it be asked and estimated for by some one of the heads of departments, and submitted to Congress by the President; or for the purpose of paying its own expenses and contingencies; or for the payment of claims against the Confederate States, the justice of which shall have been judicially declared by a tribunal for the investigation of claims against the Government, which it is hereby made the duty of Congress to establish.

(10) All bills appropriating money shall specify in federal currency the exact amount of each appropriation and the purposes for which it is made; and Congress shall grant no extra compensation to any public con-

tractor, officer, agent, or servant after such contract shall have been made or such service rendered. . . .

(20) Every law, or resolution having the force of law, shall relate to but one subject, and that shall be expressed in the title. . . .

SEC. 10. . . . (2) No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the Confederate States; and all such laws shall be subject to the revision and control of Congress.

(3) No State shall, without the consent of Congress, lay any duty of tonnage, except on sea-going vessels, for the improvement of its rivers and harbors navigated by the said vessels; but such duties shall not conflict with any treaties of the Confederate States with foreign nations; and any surplus of revenue thus derived shall, after making such improvement, be paid into the common treasury; nor shall any State keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign Power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay. But when any river divides or flows through two or more States, they may enter into compacts with each other to improve the navigation thereof.

## ARTICLE II

SEC. 1. (1) The executive power shall be vested in a President of the Confederate States of America. He and the Vice-President shall hold their offices for the term of six years; but the President shall not be re-eligible. The President and Vice-President shall be elected as follows: . . .

(10) Before he enters on the execution of the duties of his office he shall take the following oath or affirmation:

‘I do solemnly swear (or affirm) that I will faithfully execute the office of President of the Confederate States, and will, to the best of my ability, preserve, protect, and defend the Constitution thereof.’ . . .

SEC. 2. . . . (3) The principal officer in each of the executive departments, and all persons connected with the diplomatic service, may be removed from office at the pleasure of the President. All other civil officers of the executive department may be removed at any time by the President, or other appointing power, when their services are unnecessary, or for dishonesty, incapacity, inefficiency, misconduct, or neglect of duty; and when so removed the removal shall be reported to the Senate, together with the reasons therefor. . . .

#### ARTICLE IV

SEC. 2. (1) The citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States, and shall have the right of transit and sojourn in any State of this Confederacy, with their slaves and other property; and the right of property in said slaves shall not be thereby impaired. . . .

(3) No slave or other person held to service or labor in any State or Territory of the Confederate States, under the laws thereof, escaping or unlawfully carried into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such slave belongs, or to whom such service or labor may be due.

SEC. 3. (1) Other States may be admitted into this Confederacy by a vote of two-thirds of the whole House of Representatives, and two-thirds of the Senate, the Senate voting by States; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.

(2) The Congress shall have power to dispose of and make all needful rules and regulations concerning the property of the Confederate States, including the lands thereof.

(3) The Confederate States may acquire new territory; and Congress shall have power to legislate and provide governments for the inhabitants of all territory belonging to the Confederate States lying without the limits of the several States, and may permit them, at such times and in such manner as it may by law provide, to form States to be admitted into the Confederacy. In all such territory the institution of negro slavery, as it now exists in the Confederate States, shall be recognized and protected by Congress and by the territorial government; and the inhabitants of the several Confederate States and Territories shall have the right to take to such territory any slaves lawfully held by them in any of the States or Territories of the Confederate States.

#### ARTICLE V

SEC. 1. (1) Upon the demand of any three States, legally assembled in their several conventions, the Congress shall summon a convention of all the States, to take into consideration such amendments to the Constitution as the said States shall concur in suggesting at the time when the said demand is made; and should any of the proposed amendments to the Constitution be agreed on by the said convention—voting by States—and the same be ratified by the legislatures of two-thirds of the several States, or by conventions in two-thirds thereof—as the one or the other mode of ratification may be proposed by the general convention—they shall thenceforward form a part of this Constitution. But no State shall, without its consent, be deprived of its equal representation in the Senate.

#### ARTICLE VI

1. The Government established by this Constitution is the successor of the Provisional Government of the



Confederate States of America, and all the laws passed by the latter shall continue in force until the same shall be repealed or modified; and all the officers appointed by the same shall remain in office until their successors are appointed and qualified, or the offices abolished. . . .

5. The enumeration, in the Constitution, of certain rights shall not be construed to deny or disparage others retained by the people of the several States.

6. The powers not delegated to the Confederate States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people thereof.

## ARTICLE VII

1. The ratification of the conventions of five States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

2. When five States shall have ratified this Constitution in the manner before specified, the Congress, under the provisional Constitution, shall prescribe the time for holding the election of President and Vice-President, and for the meeting of the electoral college, and for counting the votes and inaugurating the President. They shall also prescribe the time for holding the first election of members of Congress under this Constitution, and the time for assembling the same. Until the assembling of such Congress, the Congress under the provisional Constitution shall continue to exercise the legislative powers granted them; not extending beyond the time limited by the Constitution of the Provisional Government.

Adopted unanimously by the Congress of the Confederate States of South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas, sitting in convention at the capitol, in the city of Montgomery, Ala., on the eleventh day of March, in the year eighteen hundred and sixty-one.

HOWELL COBB,  
*President of the Congress.*

### 31. ROBERT E. LEE'S LETTER TO HIS SISTER

20 APRIL 1861

[This letter is printed to show the attitude of many who fought for the South without any regard for Slavery, but in defence of their State and the way of life expressed in it. It was written by Colonel Lee of the First Regiment of Cavalry, later the famous Confederate General, to his sister, Mrs Anne Marshall of Baltimore, who was a supporter of the Federal Government.]

ARLINGTON, VIRGINIA,  
20 April 1861.

MY DEAR SISTER: I am grieved at my inability to see you. . . . I have been waiting for a 'more convenient season', which has brought to many before me deep and lasting regret. Now we are in a state of war which will yield to nothing. The whole South is in a state of revolution, into which Virginia, after a long struggle, has been drawn; and though I recognize no necessity for this state of things, and would have forborne and pleaded to the end for redress of grievances, real or supposed, yet in my own person I had to meet the question whether I should take part against my native State.

With all my devotion to the Union and the feeling of loyalty and duty of an American citizen, I have not been able to make up my mind to raise my hand against my relatives, my children, my home. I have therefore resigned my commission in the Army, and save in defense of my native State, with the sincere hope that my poor services may never be needed, I hope I may never be called on to draw my sword. I know you will blame me; but you must think as kindly of me as you can, and believe that I have endeavoured to do what I thought right.

To show you the feeling and struggle it has cost me, I send you a copy of my letter of resignation. I have

no time for more. May God guard and protect you and yours, and shower upon you everlasting blessings, is the prayer of your devoted brother,

R. E. LEE.

### 32. JEFFERSON DAVIS'S MESSAGE TO CONGRESS, 1861

[The Congress of the Southern States which met at Montgomery, Alabama, on 7 February 1861, elected Jefferson Davis President. He had distinguished himself as an officer in the Mexican War and had been Secretary of War from 1853 to 1857. On 15 April 1861 Lincoln, on the fall of Fort Sumter, issued a call for volunteers to put down the rebellion. On 29 April Jefferson Davis summoned the Confederate Congress to a special session and asked for authority to carry on war. In the course of his Message he stated the causes of the secession and of the formation of the Confederacy. This is, perhaps, the most reasonable statement of the Southern case.]

. . . The declaration of war made against this Confederacy by Abraham Lincoln, the President of the United States, in his proclamation issued on the 15th day of the present month, rendered it necessary, in my judgment, that you should convene at the earliest practicable moment to devise the measures necessary for the defense of the country. The occasion is indeed an extraordinary one. It justifies me in a brief review of the relations heretofore existing between us and the States which now unite in warfare against us and in a succinct statement of the events which have resulted in this warfare, to the end that mankind may pass intelligent and impartial judgment on its motives and objects. During the war waged against Great Britain by her colonies on this continent a common danger impelled them to a close alliance and to the formation of a Confederation, by the terms of which the colonies, styling themselves States, entered '*severally* into a firm

league of friendship with each other for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever'. In order to guard against any misconstruction of their compact, the several States made explicit declaration in a distinct article—that '*each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this Confederation expressly delegated to the United States in Congress assembled*'.

Under this contract of alliance, the war of the Revolution was successfully waged, and resulted in the treaty of peace with Great Britain in 1783, by the terms of which the several States were *each by name* recognized to be independent. The Articles of Confederation contained a clause whereby all alterations were prohibited unless confirmed by the Legislatures of *every State* after being agreed to by the Congress: and in obedience to this provision, under the resolution of Congress on the 21st of February 1787, the several States appointed delegates who attended a convention 'for the *sole and express purpose* of revising the Articles of Confederation and reporting to Congress and the several Legislatures such alterations and provisions therein as shall, when agreed to in Congress and *confirmed by the States*, render the Federal Constitution adequate to the exigencies of Government and the preservation of the Union'. It was by the delegates chosen by the *several States* under the resolution just quoted that the Constitution of the United States was framed in 1787 and submitted to the *several States* for ratification, as shown by the seventh article, which is in these words: 'The ratification of the *conventions of nine States* shall be sufficient for the establishment of this Constitution *between the States* so ratifying the same.' . . . The Constitution of 1787, having, however, omitted the clause already recited from the Articles

of Confederation, which provided in explicit terms that each State *retained* its sovereignty and independence, some alarm was felt in the States, when invited to ratify the Constitution, lest this omission should be construed into an abandonment of their cherished principle, and they refused to be satisfied until amendments were added to the Constitution placing beyond any pretense of doubt the reservation by the States of all their sovereign rights and powers not expressly delegated to the United States by the Constitution.

Strange, indeed, must it appear to the impartial observer, but it is none the less true that all these carefully worded clauses proved unavailing to prevent the rise and growth in the Northern States of a political school which has persistently claimed that the government thus formed was not a compact *between* States, but was in effect a national government, set up *above* and *over* the States. An organization created by the States to secure the blessings of liberty and independence against *foreign* aggression has been gradually perverted into a machine for their control in their *domestic* affairs. The *creature* has been exalted above its *creators*; the *principals* have been made subordinate to the *agent* appointed by themselves. The people of the Southern States, whose almost exclusive occupation was agriculture, early perceived a tendency in the Northern States to render the common government subservient to their own purposes by imposing burdens on commerce as a protection to their manufacturing and shipping interests. . . . By degrees, as the Northern States gained preponderance in the National Congress, self-interest taught their people to yield ready assent to any plausible advocacy of their right as a majority to govern the minority without control. They learned to listen with impatience to the suggestion of any constitutional impediment to the exercise of their will, and so utterly have the principles of the Constitution been corrupted in the Northern mind that, in the Inaugural Address delivered by President Lincoln in March last, he asserts as an axiom, which he plainly deems to be undeniable,

that the theory of the Constitution requires that in all cases the majority shall govern; . . . In addition to the long-continued and deep-seated resentment felt by the Southern States at the persistent abuse of the powers they had delegated to the Congress, for the purpose of enriching the manufacturing and shipping classes of the North at the expense of the South, there has existed for nearly half a century another subject of discord, involving interests of such transcendent magnitude as at all times to create the apprehension in the minds of many devoted lovers of the Union that its permanence was impossible. When the several States delegated certain powers to the United States Congress, a large portion of the laboring population consisted of African slaves imported into the colonies by the mother country. In twelve out of the thirteen States negro slavery existed, and the right of property in slaves was protected by law. This property was recognized in the Constitution, and provision was made against its loss by the escape of the slave. The increase in the number of slaves by further importation from Africa was also secured by a clause forbidding Congress to prohibit the slave trade anterior to a certain date, and in no clause can there be found any delegation of power to the Congress authorizing it in any manner to legislate to the prejudice, detriment, or discouragement of the owners of that species of property, or excluding it from the protection of the Government.

The climate and soil of the Northern States soon proved unpropitious to the continuance of slave labor, whilst the converse was the case at the South. Under the unrestricted free intercourse between the two sections, the Northern States consulted their own interests by selling their slaves to the South and prohibiting slavery within their limits. The South were willing purchasers of property suitable to their wants, and paid the price of the acquisition without harboring a suspicion that their quiet possession was to be disturbed by those who were inhibited not only by want of constitutional authority, but by good faith as vendors, from disquieting

a title emanating from themselves. As soon, however, as the Northern States that prohibited African slavery within their limits had reached a number sufficient to give their representation a controlling voice in the Congress, a persistent and organized system of hostile measures against the rights of the owners of slaves in the Southern States was inaugurated and gradually extended. A continuous series of measures was devised and prosecuted for the purpose of rendering insecure the tenure of property in slaves. . . . Emboldened by success, the theatre of agitation and aggression against the clearly expressed constitutional rights of the Southern States was transferred to the Congress; Senators and Representatives were sent to the common councils of the nation whose chief title to this distinction consisted in the display of a spirit of ultra-fanaticism, and whose business was not 'to promote the general welfare or insure domestic tranquillity', but to awaken the bitterest hatred against the citizens of sister States by violent denunciation of their institutions; the transaction of public affairs was impeded by repeated efforts to usurp powers not delegated by the Constitution, for the purpose of impairing the security of property in slaves, and reducing those States which held slaves to a condition of inferiority. Finally a great party was organized for the purpose of obtaining the administration of the Government, with the avowed object of using its power for the total exclusion of the slave States from all participation in the benefits of the public domain acquired by all the States in common, whether by conquest or purchase; of surrounding them entirely by States in which slavery should be prohibited; of thus rendering the property in slaves so insecure as to be comparatively worthless, and thereby annihilating in effect property worth thousands of millions of dollars. This party, thus organized, succeeded in the month of November last in the election of its candidate for the Presidency of the United States.

In the meantime, the African slaves had augmented in number from about 600,000, at the date of the

adoption of the constitutional compact, to upward of 4,000,000. In moral and social condition they had been elevated from brutal savages into docile, intelligent, and civilized agricultural laborers, and supplied not only with bodily comforts but with careful religious instruction. Under the supervision of a superior race their labor had been so directed as not only to allow a gradual and marked amelioration of their own condition, but to convert hundreds of thousands of square miles of the wilderness into cultivated lands covered with a prosperous people; towns and cities had sprung into existence, and had rapidly increased in wealth and population under the social system of the South; the white population of the Southern slaveholding States had augmented from about 1,250,000 at the date of the adoption of the Constitution to more than 8,500,000 in 1860; and the productions in the South of cotton, rice, sugar, and tobacco, for the full development and continuance of which the labor of African slaves was and is indispensable, had swollen to an amount which formed nearly three-fourths of the exports of the whole United States and had become absolutely necessary to the wants of civilized man. With interests of such overwhelming magnitude imperilled, the people of the Southern States were driven by the conduct of the North to the adoption of some course of action to avert the danger with which they were openly menaced. With this view the Legislatures of the several States invited the people to select delegates to conventions to be held for the purpose of determining for themselves what measures were best adapted to meet so alarming a crisis in their history. Here it may be proper to observe that from a period as early as 1798 there had existed in *all* of the States of the Union a party almost uninterruptedly in the majority based upon the creed that each State was, in the last resort, the sole judge as well of its wrongs as of the mode and measure of redress.

. . . In the exercise of a right so ancient, so well-established, and so necessary for self-preservation, the



people of the Confederate States, in their conventions, determined that the wrongs which they had suffered and the evils with which they were menaced required that they should revoke the delegation of powers to the Federal Government which they had ratified in their several conventions. They consequently passed ordinances resuming all their rights as sovereign and independent States and dissolved their connection with the other States of the Union. . . .

### 33. THE TRENT AFFAIR, 1861

[In the autumn of 1861 the Confederacy dispatched two envoys, James M. Mason and John Sliddell, to secure European assistance in the struggle. They sailed from Havana in the British steamer *Trent*, and on 8 November were seized from the ship by the Federal sloop *San Jacinto*. Feeling in the Northern States and in Great Britain ran very high. Reinforcements were sent to Canada, and Earl Russell, the British Foreign Secretary, drafted a demand in very severe terms for an apology and the release of the two envoys. The draft was sent to Windsor on 30 November for Queen Victoria's approval, and she discussed the question with the Prince Consort. Although already seriously ill—he died a fortnight later—the Prince spent the night in amending the draft and in softening the abruptness of the language. The Cabinet accepted the alterations, and the United States Government, though it sent no apology, released the prisoners.]

The Prince Consort's Memorandum prevented a situation which would certainly have had a deplorable effect on Anglo-American relations and which might even have led to war. Feeling in the Northern States was at first very bitter, as may be seen from Lowell's poem, 'Jonathan to John,' in the second series of *The Biglow Papers*, but the incident did a great deal less harm than at one time seemed probable.]

#### (a) *Queen Victoria to Earl Russell*

WINDSOR CASTLE, 1 December 1861.

The Queen returns these important drafts, which upon the whole she approves, but she cannot help

feeling that the main draft, that for communication to the American Government, is somewhat meagre. She should have liked to have seen the expression of a hope that the American captain did not act under instructions, or, if he did, that he misapprehended them—that the United States Government must be fully aware that the British Government could not allow its flag to be insulted, and the security of her mail communications to be placed to jeopardy, and Her Majesty's Government are unwilling to believe that the United States Government intended wantonly to put an insult upon this country, and to add to their many distressing complications by forcing a question of dispute upon us, and that we are therefore glad to believe that upon a full consideration of the circumstances, and of the undoubted breach of international law committed, they would spontaneously offer such redress as alone could satisfy this country, viz. the restoration of the unfortunate passengers and a suitable apology.

(b) *James Russell Lowell: 'Jonathan to John'*

It don't seem hardly right, John,

When both my hands was full,

To stump me to a fight, John,—

Your cousin, tu, John Bull!

Ole Uncle S. sez he, 'I guess

We know it now,' sez he,

'The lion's paw is all the law,

Accordin' to J. B.,

Thet's fit for you an' me!'

You wonder why we're hot, John?

Your mark wuz on the guns,

The neutral guns, thet shot, John,

Our brothers an' our sons:

Ole Uncle S. sez he, 'I guess

There's human blood,' sez he,

'By fits an' starts, in Yankee hearts,

Though't may surprise J. B.

More'n it would you an' me.'

Ef *I* turned mad dogs loose, John,  
On *your* front-parlor stairs,  
Would it jst meet your views, John,  
To wait an' sue their heirs?  
Ole Uncle S. sez he, 'I guess,  
I on'y guess,' sez he,  
'Thet ef Vattel on *his* toes fell,  
'Twould kind o' rile J. B.,  
Ez wal ez you an' me!'

Who made the law thet hurts, John,  
*Heads I win,—ditto tails?*  
'J. B.' was on his shirts, John,  
Unless my memory fails,  
Ole Uncle S. sez he, 'I guess  
(I'm good at thet),' sez he,  
'Thet sauce for goose ain't *jest* the juice  
For ganders with J. B.,  
No more'n with you or me!'

When your rights was our wrongs, John,  
You didn't stop for fuss,—  
Britanny's trident prongs, John,  
Was good 'nough law for us.  
Ole Uncle S. sez he, 'I guess,  
Though physic's good,' sez he,  
'It docsn't foller thet he can swaller  
Prescriptions signed "*J. B.*"  
Put up by you an' me!'

We own the ocean, tu, John:  
You mus'n' takc it hard,  
Ef we can't think with you, John,  
It's jest your own back-yard.  
Ole Uncle S. sez he, 'I guess,  
Ef *thet* 's his claim,' sez he,  
'The fencin'-stuff'll cost enough  
To bust up friend J. B.,  
Ez wal ez you an' me!'

Why talk so drefle big, John,  
Of honor when it meant  
You didn't care a fig, John,  
But jest for *ten per cent* ?  
Ole Uncle S. sez he, 'I guess  
He's like the rest,' sez he:  
'When all is done, it's number one  
Thet's nearest to J. B.,  
Ez wal ez t'you an' me!'

We give the critters back, John,  
Cos Abram thought 'twas right;  
It warn't your bullyin' clack, John,  
Provokin' us to fight.  
Ole Uncle S. sez he, 'I guess  
We've a hard row,' sez he,  
'To hoe jest now; but thet somehow,  
May happen to J. B.,  
Ez wal ez you an' me!'

We ain't so weak an' poor, John,  
With twenty million people,  
An' close to every door, John,  
A school-house an' a steeple.  
Ole Uncle S. sez he, 'I guess,  
It is a fact,' sez he,  
'The surest plan to make a Man  
Is, think him so, J. B.,  
Ez much ez you or me!'

Our folks believe in Law, John;  
An' it's for her sake, now,  
They've left the axe an' saw, John,  
The anvil an' the plough.  
Ole Uncle S. sez he, 'I guess,  
Ef 'twarnt for law,' sez he,  
'There'd be one shindy from here to Indy;  
An' thet don't suit J. B.  
(When 'tain't 'twixt you an' me!)

We know we've got a cause, John,  
 Thet's honest, just, an' true;  
 We thought 'twould win applause, John,  
 Ef nowheres else, from you.  
 Ole Uncle S. sez he, 'I guess  
 His love of right,' sez he,  
 'Hangs by a rotten fibre o' cotton :  
 There's natur' in J. B.,  
 Ez wal ez you an' me!'

The South says, '*Poor folks down!*' John,  
 An' '*All men up!*' say we,—  
 White, yaller, black, an' brown, John :  
 Now which is your idee?  
 Ole Uncle S. sez he, 'I guess,  
 John preaches wal,' sez he;  
 'But, sermon thru, an' come to *du*.  
 Why, there's the old J. B.  
 A crowdin' you an' me!'

Shall it be love, or hate, John?  
 It's you thet's to decide;  
 Ain't *your* bonds held by Fate, John,  
 Like all the world's beside?  
 Ole Uncle S. sez he, 'I guess  
 Wise men forgive,' sez he,  
 'But not forget: an' some time yet  
 Thet truth may strike J. B.,  
 Ez wal ez you an' me!'

God means to make this land, John,  
 Clear thru, from sea to sea,  
 Believe an' understand, John,  
 The *wuth* o' bein' free.  
 Ole Uncle S. sez he, 'I guess,  
 God's price is high,' sez he;  
 'But nothin' else than wut He sells  
 Wears long, an' thet J. B.  
 May larn, like you an' me!'

### 34. THE HOMESTEAD ACT, 1862

[The Republican Party had been founded as a coalition of Northern and Western interests. The party programme for the Presidential Election of 1860 had combined the banishment of slavery from the Territories with a protective tariff and free homesteads for the settlers. This last had been a Western demand for many years. Under the Homestead Act of 1862 Congress presented to each settler a quarter-section or 160 acres of public land for a nominal fee. The result was a great migration to the West, and fifteen thousand homesteads were actually granted during the Civil War.]

*An Act to secure homesteads to actual settlers  
on the public domain.*

*Be it enacted*, That any person who is the head of a family, or who has arrived at the age of twenty-one years, and is a citizen of the United States, or who shall have filed his declaration of intention to become such, as required by the naturalization laws of the United States, and who has never borne arms against the United States Government or given aid and comfort to its enemies, shall, from and after the first of January, eighteen hundred and sixty-three, be entitled to enter one quarter-section or a less quantity of unappropriated public lands, upon which said person may have filed a pre-emption claim, or which may, at the time the application is made, be subject to pre-emption at one dollar and twenty-five cents, or less, per acre; or eighty acres or less of such unappropriated lands at two dollars and fifty cents per acre, to be located in a body, in conformity to the legal subdivisions of the public lands, and after the same shall have been surveyed: *Provided*, That any person owning or residing on land may, under the provisions of this Act, enter other land lying contiguous to his or her said land, which shall not, with the land so already owned and occupied, exceed in the aggregate one hundred and sixty acres.

SEC. 2. That the person applying for the benefit of

this Act shall, upon application to the register of the land office in which he or she is about to make such entry, make affidavit before the said register or receiver that he or she is the head of a family, or is twenty-one or more years of age, or shall have performed service in the Army or Navy of the United States, and that he has never borne arms against the Government of the United States or given aid and comfort to its enemies, and that such application is made for his or her exclusive use and benefit, and that said entry is made for the purpose of actual settlement and cultivation, and not, either directly or indirectly, for the use or benefit of any other person or persons whomsoever; and upon filing the said affidavit with the register or receiver, and on payment of ten dollars, he or she shall thereupon be permitted to enter the quantity of land specified: *Provided, however,* That no certificate shall be given or patent issued therefor until the expiration of five years from the date of such entry; and if, at the expiration of such time, or at any time within two years thereafter, the person making such entry—or if he be dead, his widow; or in case of her death, his heirs or devisee; or in case of a widow making such entry, her heirs or devisee, in case of her death—shall prove by two credible witnesses that he, she, or they have resided upon or cultivated the same for the term of five years immediately succeeding the time of filing the affidavit aforesaid, and shall make affidavit that no part of said land has been alienated, and that he has borne true allegiance to the Government of the United States; then, in such case, he, she, or they, if at that time a citizen of the United States, shall be entitled to a patent, as in other cases provided for by law: *And provided, further,* That in case of the death of both father and mother, leaving an infant child or children under twenty-one years of age, the right and fee shall inure to the benefit of said infant child or children; and the executor, administrator, or guardian may, at any time within two years after the death of the surviving parent, and in accordance with the laws of the State in which such

children for the time being have their domicile, sell said land for the benefit of said infants, but for no other purpose; and the purchaser shall acquire the absolute title by the purchase, and be entitled to a patent from the United States, on payment of the office fees and sum of money herein specified. . . .

### 35. THE PACIFIC RAILWAY ACT, 1862

[Since 1845 the problem of the various routes by which a transcontinental railway might join the Atlantic and Pacific States had been a serious political issue. The secession of the Southern States gave the Northern interests their chance, and on 1 July 1862 Congress passed an Act authorizing the 'Union Pacific Railroad Company' to construct a railway through Nebraska and Wyoming Territory to Nevada Territory and offering the Company considerable government aid, including a right of way across the public land and a large credit. Similar concessions were granted to the Central Pacific Railroad Company of California. In 1864 the grants of land were doubled.

The two railways met on 10 May 1869, near the Great Salt Lake.]

*An Act to aid in the Construction of a Railroad and Telegraph Line from the Missouri River to the Pacific Ocean. . . .*

*Be it enacted*, That Walter S. Burgess [names of corporators]; together with five commissioners to be appointed by the Secretary of the Interior . . . are hereby created and erected into a body corporate . . . by the name . . . of 'The Union Pacific Railroad Company' . . .; and the said corporation is hereby authorized and empowered to lay out, locate, construct, furnish, maintain and enjoy a continuous railroad and telegraph . . . from a point on the one hundredth meridian of longitude west from Greenwich, between the south margin of the valley of the Republican River



and the north margin of the valley of the Platte River, to the western boundary of Nevada Territory, upon the route and terms hereinafter provided. . . .

Sec. 2. That the right of way through the public lands be . . . granted to said company for the construction of said railroad and telegraph line; and the right . . . is hereby given to said company to take from the public lands adjacent to the line of said road, earth, stone, timber, and other materials for the construction thereof; said right of way is granted to said railroad to the extent of two hundred feet in width on each side of said railroad when it may pass over the public lands, including all necessary grounds for stations, buildings, workshops, and depots, machine shops, switches, side tracks, turn tables, and water stations. The United States shall extinguish as rapidly as may be the Indian titles to all lands falling under the operation of this Act. . . .

Sec. 3. That there be . . . granted to the said company, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of mails, troops, munitions of war, and public stores thereon, every alternate section of public land, designated by odd numbers, to the amount of five alternate sections per mile on each side of said railroad, on the line thereof, and within the limits of ten miles on each side of said road. . . . *Provided* That all mineral lands shall be excepted from the operation of this Act; but where the same shall contain timber, the timber thereon is hereby granted to said company. . . .

Sec. 5. That for the purposes herein mentioned the Secretary of the Treasury shall . . . in accordance with the provisions of this Act, issue to said company bonds of the United States of one thousand dollars each, payable in thirty years after date, paying six per centum per annum interest . . . to the amount of sixteen of said bonds per mile for each section of forty miles; and to secure the repayment to the United States . . . of the amount of said bonds . . . the issue of said bonds

. . . shall *ipso facto* constitute a first mortgage on the whole line of the railroad and telegraph. . . .

Sec. 9. That the Leavenworth, Pawnee and Western Railroad Company of Kansas are hereby authorized to construct a railroad and telegraph line . . . upon the same terms and conditions in all respects as are provided [for construction of the Union Pacific Railroad]. . . . The Central Pacific Railroad Company of California are hereby authorized to construct a railroad and telegraph line from the Pacific coast . . . to the eastern boundaries of California upon the same terms and conditions in all respects [as are provided for the Union Pacific Railroad].

Sec. 10. . . . And the Central Pacific Railroad Company of California, after completing its road across said State, is authorized to continue the construction of said railroad and telegraph through the Territories of the United States to the Missouri River . . . upon the terms and conditions provided in this Act in relation to the Union Pacific Railroad Company, until said roads shall meet and connect. . . .

Sec. 11. That for three hundred miles of said road most mountainous and difficult of construction, to wit: one hundred and fifty miles westerly from the eastern base of the Rocky Mountains, and one hundred and fifty miles eastwardly from the western base of the Sierra Nevada mountains . . . the bonds to be issued to aid in the construction thereof shall be treble the number per mile hereinbefore provided . . . ; and between the sections last named of one hundred and fifty miles each, the bonds to be issued to aid in the construction thereof shall be double the number per mile first mentioned. . . .

### 36. LINCOLN'S LETTER TO HORACE GREELEY

22 AUGUST 1862

[The Abolitionists regarded Lincoln with extreme suspicion for his readiness to allow Slavery to continue in the South. On 20 August 1860 Horace Greeley, Editor of the *New York Tribune*, published an open letter, 'The Prayer of Twenty Millions,' attacking Lincoln for his failure to adopt a policy of emancipation. Lincoln answered with an open letter in the Press, which went a good way in hinting that he contemplated a change of policy.]

EXECUTIVE MANSION,  
WASHINGTON, 22 August 1862.

*Hon. Horace Greeley:*

DEAR SIR: I have just read yours of the nineteenth, addressed to myself through the *New-York Tribune*. If there be in it any statements or assumptions of fact which I may know to be erroneous, I do not now and here controvert them. If there be in it any inferences which I may believe to be falsely drawn, I do not now and here argue against them. If there be perceptible in it an impatient and dictatorial tone, I waive it in deference to an old friend, whose heart I have always supposed to be right.

As to the policy I 'seem to be pursuing', as you say, I have not meant to leave any one in doubt.

I would save the Union. I would save it the shortest way under the Constitution. The sooner the national authority can be restored, the nearer the Union will be 'the Union as it was'. If there be those who would not save the Union unless they could at the same time *save* Slavery, I do not agree with them. If there be those who would not save the Union unless they could at the same time *destroy* Slavery, I do not agree with them. My paramount object in this struggle is to save the Union, and is *not* either to save or destroy Slavery. If I could save the Union without freeing *any* slave, I would do it; and if I could save it by freeing *all* the slaves, I

would do it; and if I could do it by freeing some and leaving others alone, I would also do that. What I do about Slavery and the colored race, I do because I believe it helps to save this Union; and what I forbear, I forbear because I do *not* believe it would help to save the Union. I shall do *less* whenever I shall believe what I am doing hurts the cause, and I shall do *more* whenever I shall believe doing more will help the cause. I shall try to correct errors when shown to be errors; and I shall adopt new views so fast as they shall appear to be true views. I have here stated my purpose according to my view of *official* duty, and I intend no modification of my oft-expressed *personal* wish that all men, everywhere, could be free.—Yours,

A. LINCOLN.

### 37. THE BATTLE HYMN OF THE REPUBLIC

[The most popular marching song of the Federal armies was the famous ballad, 'John Brown's Body lies mouldering in the Grave,' written by Thomas Brigham Bishop. Julia Ward Howe, a leading abolitionist and reformer, heard the song at Washington in the early days of the war and wrote new words to the tune, which came to be known as the Battle Hymn of the Republic and was sung at meetings of the Republican Party.]

Mine eyes have seen the glory of the coming of the  
Lord:

He is trampling out the vintage where the grapes of  
wrath are stored;

He hath loosed the fateful lightning of His terrible  
swift sword:

His Truth is marching on.

I have seen Him in the watch-fires of a hundred circling  
camps;

They have builded Him an altar in the evening dews  
and damps;

I have read His righteous sentence by the dim and  
flaring lamps.

His day is marching on.

I have read a fiery gospel, writ in burnished rows of  
steel :

'As ye deal with my contemners, so with you my grace  
shall deal ;

Let the Hero, born of woman, crush the serpent with  
his heel,

Since God is marching on.'

He has sounded forth the trumpet that shall never call  
retreat ;

He is sifting out the hearts of men before His judgment-  
seat ;

Oh ! be swift, my soul, to answer Him ! be jubilant,  
my feet !

Our God is marching on.

In the beauty of the lilies Christ was born across the  
sea,

With a glory in His bosom that transfigures you and  
me :

As He died to make men holy, let us die to make men  
free,

While God is marching on.

### 38. *MY MARYLAND*

[Maryland was a Slave State, and her decision at the opening of the Civil War was of the greatest importance. If she had seceded, the Federal Capital of Washington would have lain at the mercy of the Confederates. On 19 April 1861 the Federal troops passing through Baltimore, the State capital, were mobbed by the crowd, and the Legislature passed a resolution protesting against the coercion of the South, but no further steps were taken and the State remained loyal to the Union.]

James Ryder Randall, a native of Baltimore and a supporter of the South, on hearing the news of the riot, wrote the famous song, 'My Maryland,' which was later set to the tune Tannenbaum. It became the most popular marching song of the Confederate troops. On 29 and 30 August 1862 General Pope was completely defeated by General Lee at the Second Battle of Bull Run. The Confederates decided to advance, and on 4 September crossed the Potomac and entered Federal territory. Lee hoped to win over Maryland, and his troops marched to this song. But Maryland did not respond, and on 17 September Lee was defeated by McClellan at the Battle of Antietam or Sharpsburg and withdrew to Virginia.]

*My Maryland*

The despot's heel is on thy shore,  
Maryland!  
His torch is at thy temple door,  
Maryland!  
Avenge the patriotic gore  
That flecked the streets of Baltimore,  
And be the battle-queen of yore,  
Maryland, My Maryland!

Hark to an exiled son's appeal,  
Maryland!  
My Mother State, to thee I kneel,  
Maryland!  
For life and death, for woe and weal,  
Thy peerless chivalry reveal,  
And gird thy beauteous limbs with steel,  
Maryland, My Maryland!

Thou wilt not cower in the dust,  
Maryland!  
Thy beaming sword shall never rust,  
Maryland!  
Remember Carroll's sacred trust,  
Remember Howard's warlike thrust,  
And all thy slumbers with the just,  
Maryland, My Maryland!

## My Maryland

Come! 'tis the red dawn of the day,  
Maryland!  
Come with thy panoplied array,  
Maryland!  
With Ringgold's spirit for the fray,  
With Watson's blood at Montcrey,  
With fearless Lowe and dashing May,  
Maryland, My Maryland!

Dear Mother, burst the tyrant's chain,  
Maryland!  
Virginia should not call in vain,  
Maryland!  
She meets her sisters on the plain,—  
'*Sic semper!*' 'tis the proud refrain  
That baffles minions back amain,  
Maryland!  
Arise in majesty again,  
Maryland, My Maryland!

Come! for thy shield is bright and strong,  
Maryland!  
Come! for thy dalliance does thee wrong,  
Maryland!  
Come to thine own heroic throng  
Stalking with Liberty along,  
And chant thy dauntless slogan-song,  
Maryland, My Maryland!

I see the blush upon thy check,  
Maryland!  
For thou wast ever bravely meek,  
Maryland!  
But lo! there surges forth a shriek,  
From hill to hill, from creek to creek,  
Potomac calls to Chesapeake,  
Maryland, My Maryland!

Thou wilt not yield the Vandal toll,  
Maryland!  
Thou wilt not crook to his control,  
Maryland!  
Better the fire upon thee roll,  
Better the shot, the blade, the bowl,  
Than crucifixion of the soul,  
Maryland, My Maryland!

I hear the distant thunder hum,  
Maryland!  
The Old Line's bugle, fife, and drum,  
Maryland!  
She is not dead, nor deaf, nor dumb;  
Huzza! she spurns the Northern scum!  
She breathes! She burns! She'll come!  
She'll come!  
Maryland, My Maryland!

### 39. THE PRELIMINARY EMANCIPATION PROCLAMATION, 1862

[In July 1862 Lincoln decided in favour of emancipating the slaves in rebel territory, but on Seward's advice he postponed the declaration until some definite military success had been gained. On 17 September McClellan won the battle of Antietam, and Lee withdrew from Maryland. On 22 September Lincoln opened his Cabinet meeting by reading aloud passages from a new work by Artemus Ward and then proceeded to inform the members that he had decided to publish the Proclamation.

The Preliminary Proclamation was followed on 1 January 1863 by the Emancipation Proclamation, a definite executive Act by the President in virtue of his power as Commander-in-Chief of the Army and Navy of the United States. Congress on 15 December had passed a resolution declaring that the Proclamation was warranted by the Constitution.]



*A Proclamation, 22 September 1862*

I, Abraham Lincoln, President of the United States of America, and commander-in-chief of the army and navy thereof, do hereby proclaim and declare that hereafter, as heretofore, the war will be prosecuted for the object of practically restoring the constitutional relation between the United States and each of the States, and the people thereof, in which States that relation is or may be suspended or disturbed.

That it is my purpose, upon the next meeting of Congress, to again recommend the adoption of a practical measure tendering pecuniary aid to the free acceptance or rejection of all slave States, so called, the people whereof may not then be in rebellion against the United States, and which States may then have voluntarily adopted, or thereafter may voluntarily adopt, immediate or gradual abolishment of slavery within their respective limits; and that the effort to colonize persons of African descent with their consent upon this continent or elsewhere, with the previously obtained consent of the governments existing there, will be continued.

That on the first day of January, in the year of our Lord one thousand eight hundred and sixty-three, all persons held as slaves within any State or designated part of a State the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free; and the Executive Government of the United States, including the military and naval authority thereof, will recognize and maintain the freedom of such persons, and will do no act or acts to repress such persons, or any of them, in any efforts they may make for their actual freedom.

That the Executive will, on the first day of January aforesaid, by proclamation designate the States and parts of States, if any, in which the people thereof, respectively, shall then be in rebellion against the United States; and the fact that any State, or the people thereof, shall on that day be in good faith

represented in the Congress of the United States by members chosen thereto at elections wherein a majority of the qualified voters of such State shall have participated, shall, in the absence of strong countervailing testimony, be deemed conclusive evidence that such State, and the people thereof, are not then in rebellion against the United States.

That attention is hereby called to an Act of Congress entitled 'An Act to make an additional article of war,' approved 13 March 1862, and which Act is in the words and figure following:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter the following shall be promulgated as an additional article of war, for the government of the army of the United States, and shall be obeyed and observed as such:

ARTICLE .—All officers or persons in the military or naval service of the United States are prohibited from employing any of the forces under their respective commands for the purpose of returning fugitives from service or labor who may have escaped from any persons to whom such service or labor is claimed to be due; and any officer who shall be found guilty by a court martial of violating this article shall be dismissed from the service.

SEC. 2. And be it further enacted, That this Act shall take effect from and after its passage.

Also to the ninth and tenth sections of an Act entitled 'An Act to suppress insurrection, to punish treason and rebellion, to seize and confiscate property of rebels, and for other purposes,' approved 17 July 1862, and which sections are in the words and figures following:

SEC. 9. And be it further enacted, That all slaves of persons who shall hereafter be engaged in rebellion against the Government of the United States, or who shall in any way give aid or comfort thereto, escaping from such persons and taking refuge within the lines of the army; and all slaves captured from such persons or deserted by them, and coming under the control of the Government of the United States; and all slaves of such persons found on [or] being within any place occupied by rebel forces and afterwards

occupied by the forces of the United States, shall be deemed captives of war, and shall be forever free of their servitude, and not again held as slaves.

SEC. 10. And be it further enacted, That no slave escaping into any State, Territory, or the District of Columbia, from any other State, shall be delivered up, or in any way impeded or hindered of his liberty, except for crime, or some offense against the laws, unless the person claiming said fugitive shall first make oath that the person to whom the labor or service of such fugitive is alleged to be due is his lawful owner, and has not borne arms against the United States in the present rebellion, nor in any way given aid and comfort thereto; and no person engaged in the military or naval service of the United States shall, under any pretense whatever, assume to decide on the validity of the claim of any person to the service or labor of any other person, or surrender up any such person to the claimant, on pain of being dismissed from the service.

And I do hereby enjoin upon and order all persons engaged in the military and naval service of the United States to observe, obey, and enforce, within their respective spheres of service, the Act and sections above recited.

And the Executive will in due time recommend that all citizens of the United States who shall have remained loyal thereto throughout the rebellion shall (upon the restoration of the constitutional relation between the United States and their respective States and people, if that relation shall have been suspended or disturbed) be compensated for all losses by Acts of the United States, including the loss of slaves.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this twenty-second day of September, in the year of our Lord  
[L.S.] one thousand eight hundred and sixty-two,  
and of the independence of the United States  
the eighty-seventh.

ABRAHAM LINCOLN.

## 40. THE GETTYSBURG ORATION

19 NOVEMBER 1863

[At the Battle of Gettysburg on 1, 2, and 3 July 1863 the Confederate Army under Lee was defeated by the Federals, commanded by General Meade. The crisis came on the last day when 5000 Virginians, under the command of General Pickett, advanced to attack Cemetery Hill and were driven back. On this hill were buried many of those who had died in the Federal Army, and on 19 November the new Cemetery was dedicated. The chief speech, two hours in duration, was delivered by Edward Everett, a famous orator. Lincoln's speech made little impression at the time.]

Fourscore and seven years ago our fathers brought forth on this continent a new nation, conceived in liberty, and dedicated to the proposition that all men are created equal.

Now we are engaged in a great civil war, testing whether that nation, or any nation so conceived and so dedicated, can long endure. We are met on a great battlefield of that war. We have come to dedicate a portion of that field as a final resting-place for those who here gave their lives that that nation might live. It is altogether fitting and proper that we should do this.

But, in a larger sense, we cannot dedicate—we cannot consecrate—we cannot hallow—this ground. The brave men, living and dead, who struggled here have consecrated it far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here. It is for us, the living, rather, to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us—that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion; that we here highly resolve that these dead shall not have died in vain; that this nation, under God,

shall have a new birth of freedom; and that government of the people, by the people, for the people, shall not perish from the earth.

#### 41. THE PROCLAMATION OF AMNESTY AND RECONSTRUCTION, 1863

[Nothing shows more clearly what was lost to the United States by the assassination of President Lincoln than his Proclamation of Amnesty and Reconstruction on 8 December 1863, and his later speeches amplifying the declaration. The policy here outlined was bitterly attacked at the time by the Radical wing of the Republican Party, and after his death it was completely abandoned.]

##### *A Proclamation*

*Whereas* in and by the Constitution of the United States it is provided that the President 'shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment'; and

*Whereas* a rebellion now exists whereby the loyal State governments of several States have for a long time been subverted, and many persons have committed and are now guilty of treason against the United States; and

*Whereas*, with reference to said rebellion and treason, laws have been enacted by Congress declaring forfeitures and confiscation of property and liberation of slaves, all upon terms and conditions therein stated, and also declaring that the President was thereby authorized at any time thereafter, by proclamation, to extend to persons who may have participated in the existing rebellion in any State or part thereof pardon and amnesty, with such exceptions and at such times and on such conditions as he may deem expedient for the public welfare; and

*Whereas* the Congressional declaration for limited and conditional pardon accords with well-established judicial exposition of the pardoning power; and

*Whereas*, with reference to said rebellion, the President of the United States has issued several proclamations with provisions in regard to the liberation of slaves; and

*Whereas* it is now desired by some persons heretofore engaged in said rebellion to resume their allegiance to the United States and to reinaugurate loyal State governments within and for their respective States:

*Therefore*, I, Abraham Lincoln, President of the United States, do proclaim, . . . to all persons who have, directly or by implication, participated in the existing rebellion, except as hereinafter excepted, that a full pardon is hereby granted to them and each of them, with restoration of all rights of property, except as to slaves and in property cases where rights of third parties shall have intervened, and upon the condition that every such person shall take and subscribe an oath and thenceforward keep and maintain said oath inviolate, and which oath shall be registered for permanent preservation and shall be of the tenor and effect following, to wit:

I, ———, do solemnly swear, in presence of Almighty God, that I will henceforth faithfully support, protect, and defend the Constitution of the United States and the Union of the States thereunder; and that I will in like manner abide by and faithfully support all Acts of Congress passed during the existing rebellion with reference to slaves, so long and so far as not repealed, modified, or held void by Congress or by decision of the Supreme Court; and that I will in like manner abide by and faithfully support all proclamations of the President made during the existing rebellion having reference to slaves, so long and so far as not modified or declared void by decision of the Supreme Court. So help me God.

The persons excepted from the benefits of the foregoing provisions are all who are or shall have been civil or diplomatic officers or agents of the so-called Confederate Government; all who have left judicial stations under the United States to aid the rebellion; all who are or shall have been military or naval officers of said

so-called Confederate Government above the rank of colonel in the army or of lieutenant in the navy; all who left seats in the United States Congress to aid the rebellion; all who resigned commissions in the Army or Navy of the United States and afterwards aided the rebellion; and all who have engaged in any way in treating colored persons, or white persons in charge of such, otherwise than lawfully as prisoners of war, and which persons may have been found in the United States service as soldiers, seamen, or in any other capacity.

And I do further proclaim, declare, and make known that whenever, in any of the States of Arkansas, Texas, Louisiana, Mississippi, Tennessee, Alabama, Georgia, Florida, South Carolina, and North Carolina, a number of persons, not less than one-tenth in number of the votes cast in such State at the Presidential election of the year A.D. 1860, each having taken oath aforesaid, and not having since violated it, and being a qualified voter by the election law of the State existing immediately before the so-called act of secession, and excluding all others, shall re-establish a State government which shall be republican and in nowise contravening said oath, such shall be recognized as the true government of the State, and the State shall receive thereunder the benefits of the constitutional provision which declares that 'the United States shall guarantee to every State in this Union a republican form of government and shall protect each of them against invasion, and, on application of the legislature, or the executive (when the legislature cannot be convened), against domestic violence'.

And I do further proclaim, declare, and make known that any provision which may be adopted by such State government in relation to the freed people of such State which shall recognize and declare their permanent freedom, provide for their education, and which may yet be consistent as a temporary arrangement with their present condition as a laboring, landless, and homeless class, will not be objected to by the National Executive.

And it is suggested as not improper that in constructing

a loyal State government in any State the name of the State, the boundary, the subdivisions, the constitution, and the general code of laws as before the rebellion be maintained, subject only to the modifications made necessary by the conditions hereinbefore stated, and such others, if any, not contravening said conditions and which may be deemed expedient by those framing the new State government.

To avoid misunderstanding, it may be proper to say that this proclamation, so far as it relates to State governments, has no reference to States wherein loyal State governments have all the while been maintained. And for the same reason it may be proper to further say that whether members sent to Congress from any State shall be admitted to seats constitutionally rests exclusively with the respective Houses, and not to any extent with the Executive. And, still further, that this proclamation is intended to present the people of the States wherein the national authority has been suspended and loyal State governments have been subverted, a mode in and by which the national authority and loyal State governments may be re-established within said States or in any of them; and while the mode presented is the best the Executive can suggest, with his present impressions, it must not be understood that no other possible mode would be acceptable.

ABRAHAM LINCOLN.

## 42. THE PRESIDENTIAL ELECTION OF 1864

[The Presidential Election of 1864 was a crisis in Lincoln's career. The Radical wing of his own party opposed him, distrusting his policy towards those rebel States which had been reconquered. They received support from the 'Copper-heads', those who felt that negotiations with the Confederates should be opened immediately. Lincoln was nominated as candidate at the Convention of the National Union Party,



as the Republicans and War Democrats styled themselves, on 7 June. The Radicals on 8 July passed through Congress a Bill, known as the Wade-Davis Bill from the two Senators who were their leaders. This laid down the measures to be taken as the States were reconquered, but it was defeated by Lincoln by means of a 'pocket-veto'. His Proclamation against it was followed by the Wade-Davis Manifesto, published in August. This quarrel foreshadowed the struggle over Reconstruction between Andrew Johnson, Lincoln's successor, and the Radicals in Congress.

Those Democrats who were in favour of negotiations held their Convention in August and adopted in their platform a resolution, drafted by Senator Vallandigham, which demanded an immediate cessation of hostilities. Their choice as candidate was General McClellan, perhaps the ablest Federal general after Grant, who had been dismissed from the command of the Army of the Potomac after his failure to follow up his victory at Antietam. Although McClellan refused to accept this particular resolution in his programme, the result of its adoption by the Convention was to unite the National Union Party. Lincoln, with Andrew Johnson, a War Democrat from Tennessee, as candidate for the Vice-Presidency, was re-elected by an overwhelming majority of votes, 216 against 21 for McClellan, though his majority in the popular vote was not nearly so impressive, 2,216,067 against 1,808,725.]

(a) *The Wade-Davis Bill, 8 July 1864*

*An Act to guarantee to certain States whose Governments have been usurped or overthrown a Republican Form of Government.*

*Be it enacted*, That in the States declared in rebellion against the United States, the President shall, by and with the advice and consent of the Senate, appoint for each a provisional governor, . . . who shall be charged with the civil administration of such State until a State government therein shall be recognized as hereinafter provided.

SEC. 2. That so soon as the military resistance to the United States shall have been suppressed in any such State, and the people thereof shall have sufficiently

returned to their obedience to the constitution and the laws of the United States, the provisional governor shall direct the marshal of the United States, as speedily as may be, to name a sufficient number of deputies, and to enroll all white male citizens of the United States, resident in the State in their respective counties, and to request each one to take the oath to support the constitution of the United States, and in his enrolment to designate those who take and those who refuse to take that oath, which rolls shall be forthwith returned to the provisional governor; and if the persons taking that oath shall amount to a majority of the persons enrolled in the State, he shall, by proclamation, invite the loyal people of the State to elect delegates to a convention charged to declare the will of the people of the State relative to the re-establishment of a State government subject to, and in conformity with, the constitution of the United States.

SEC. 3. That the convention shall consist of as many members as both houses of the last constitutional State legislature, apportioned by the provisional governor among the counties, parishes, or districts of the State, in proportion to the white population, returned as electors, by the marshal, in compliance with the provisions of this Act. The provisional governor shall, . . . provide an adequate force to keep the peace during the election.

SEC. 4. That the delegates shall be elected by the loyal white male citizens of the United States of the age of twenty-one years, and resident at the time in the county, parish, or district in which they shall offer to vote, and enrolled as aforesaid, or absent in the military service of the United States, and who shall take and subscribe the oath of allegiance to the United States in the form contained in the Act of 2 July 1862; and all such citizens of the United States who are in the military service of the United States shall vote at the headquarters of their respective commands, under such regulations as may be prescribed by the provisional governor for the taking and return of their votes; but no person who

has held or exercised any office, civil or military, State or confederate, under the rebel usurpation, or who has voluntarily borne arms against the United States, shall vote, or be eligible to be elected as delegate, at such election.

SEC. 5. That the said commissioners, . . . shall hold the election in conformity with this Act and, . . . shall proceed in the manner used in the State prior to the rebellion. The oath of allegiance shall be taken and subscribed on the poll-book by every voter in the form above prescribed, but every person known by, or proved to, the commissioners to have held or exercised any office, civil or military, State or confederate, under the rebel usurpation, or to have voluntarily borne arms against the United States, shall be excluded, though he offer to take the oath; and in case any person who shall have borne arms against the United States shall offer to vote he shall be deemed to have borne arms voluntarily unless he shall prove the contrary by the testimony of a qualified voter. . . .

SEC. 6. That the provisional governor shall, by proclamation, convene the delegates elected as aforesaid, at the capital of the State, on a day not more than three months after the election, giving at least thirty days' notice of such day. In case the said capital shall in his judgment be unfit, he shall in his proclamation appoint another place. He shall preside over the deliberations of the convention, and administer to each delegate, before taking his seat in the convention, the oath of allegiance to the United States in the form above prescribed.

SEC. 7. That the convention shall declare, on behalf of the people of the State, their submission to the constitution and laws of the United States, and shall adopt the following provisions, hereby prescribed by the United States in the execution of the constitutional duty to guarantee a republican form of government to every State, and incorporate them in the constitution of the State, that is to say:

First. No person who has held or exercised any

office, civil or military, except offices merely ministerial, and military offices below the grade of colonel. State or confederate, under the usurping power, shall vote for or be a member of the legislature, or governor.

Second. Involuntary servitude is forever prohibited, and the freedom of all persons is guaranteed in said State.

Third. No debt, State or confederate, created by or under the sanction of the usurping power, shall be recognized or paid by the State.

SEC. 8. That when the convention shall have adopted those provisions, it shall proceed to re-establish a republican form of government, and ordain a constitution containing those provisions, which, when adopted, the convention shall by ordinance provide for submitting to the people of the State, entitled to vote under this law, at an election to be held in the manner prescribed by the Act for the election of delegates; but at a time and place named by the convention, at which election the said electors, and none others, shall vote directly for or against such constitution and form of State government, and the returns of said election shall be made to the provisional governor, who shall canvass the same in the presence of the electors, and if a majority of the votes cast shall be for the constitution and form of government, he shall certify the same, with a copy thereof, to the President of the United States, who, after obtaining the assent of Congress, shall, by proclamation, recognize the government so established, and none other, as the constitutional government of the State, and from the date of such recognition, and not before, Senators and Representatives, and electors for President and Vice-President may be elected in such State, according to the laws of the State and of the United States.

SEC. 9. That if the convention shall refuse to re-establish the State government on the conditions aforesaid, the provisional governor shall declare it dissolved; but it shall be the duty of the President, whenever he shall have reason to believe that a sufficient number of

the people of the State entitled to vote under this Act, in number not less than a majority of those enrolled, as aforesaid, are willing to re-establish a State government on the conditions aforesaid, to direct the provisional governor to order another election of delegates to a convention for the purpose. . . .

SEC. 10. That, until the United States shall have recognized a republican form of State government, the provisional governor in each of said States shall see that this Act, and the laws of the United States, and the laws of the State in force when the State government was overthrown by the rebellion, are faithfully executed within the State; but no law or usage whereby any person was heretofore held in involuntary servitude shall be recognized or enforced by any court or officer in such State, and the laws for the trial and punishment of white persons shall extend to all persons, and jurors shall have the qualifications of voters under this law for delegates to the convention. . . .

SEC. 11. That until the recognition of a State government as aforesaid, the provisional governor shall, under such regulations as he may prescribe, cause to be assessed, levied, and collected, for the year eighteen hundred and sixty-four, and every year thereafter, the taxes provided by the laws of such State to be levied during the fiscal year preceding the overthrow of the State government thereof, in the manner prescribed by the laws of the State, as nearly as may be; . . . The proceeds of such taxes shall be accounted for to the provisional governor, and be by him applied to the expenses of the administration of the laws in such State, subject to the direction of the President, and the surplus shall be deposited in the treasury of the United States to the credit of such State, to be paid to the State upon an appropriation therefor, to be made when a republican form of government shall be recognized therein by the United States.

SEC. 12. That all persons held to involuntary servitude or labor in the States aforesaid are hereby emancipated and discharged therefrom, and they and

their posterity shall be forever free. And if any such persons or their posterity shall be restrained of liberty, under pretence of any claim to such service or labor, the courts of the United States shall, on habeas corpus, discharge them.

SEC. 13. That if any person declared free by this Act, or any law of the United States, or any proclamation of the President, be restrained of liberty, with intent to be held in or reduced to involuntary servitude or labor, the person convicted before a court of competent jurisdiction of such Act shall be punished by fine of not less than fifteen hundred dollars, and be imprisoned not less than five nor more than twenty years.

SEC. 14. That every person who shall hereafter hold or exercise any office, civil or military, except offices merely ministerial, and military offices below the grade of colonel, in the rebel service, State or confederate, is hereby declared not to be a citizen of the United States.

*(b) The Democratic National Platform,*

*29 August 1864*

*Resolved*, That in the future, as in the past, we will adhere with unswerving fidelity to the Union under the Constitution as the only solid foundation of our strength, security, and happiness as a people, and as a framework of government equally conducive to the welfare and prosperity of all the States, both northern and southern.

*Resolved*, That this Convention does explicitly declare, as the sense of the American people, that after four years of failure to restore the Union by the experiment of war, during which, under the pretence of a military necessity, or war power higher than the Constitution, the Constitution itself has been disregarded in every part, and public liberty and private right alike trodden down and the material prosperity of the country essentially impaired—justice, humanity, liberty, and the public welfare demand that immediate efforts be made for a cessation of hostilities, with a view to an ultimate Convention of the States, or other peaceable means, to

the end that at the earliest practicable moment peace may be restored on the basis of the Federal Union of the States.

*Resolved*, That the direct interference of the military authorities of the United States in the recent elections held in Kentucky, Maryland, Missouri, and Delaware, was a shameful violation of the Constitution; and a repetition of such acts in the approaching election will be held as revolutionary, and will be resisted with all the means and power under our control.

*Resolved*, That the aim and object of the Democratic Party is to preserve the Federal Union and the rights of the States unimpaired; and they hereby declare that they consider that the administrative usurpation of extraordinary and dangerous powers not granted by the Constitution; the subversion of the civil by the military law in States not in insurrection; the arbitrary arrest, imprisonment, trial, and sentence of American citizens in States where civil law exists in full force; the suppression of freedom of speech and of the press; the denial of the right of asylum; the open and avowed disregard of State rights; the employment of unusual test-oaths, and the interference with and denial of the right of the people to bear arms in their defence, is calculated to prevent a restoration of the Union and the perpetuation of a Government deriving its just powers from the consent of the governed.

*Resolved*, That the shameful disregard of the Administration in its duty in respect to our fellow-citizens who are now, and long have been, prisoners of war in a suffering condition, deserves the strongest reprobation, on the score alike of public policy and common humanity.

*Resolved*, That the sympathy of the Democratic Party is heartily and earnestly extended to the soldiery of our army and sailors of our navy, who are, and have been in the field and on the sea, under the flag of their country; and, in the event of its attaining power, they will receive all the care, protection, and regard that the brave soldiers and sailors of the Republic have so nobly earned.

## 43. LINCOLN'S SECOND INAUGURAL ADDRESS

4 MARCH 1865

[In November 1864 Lincoln had gained an easy victory in the Presidential Election, and in that month and in December Sherman had made his famous march through Georgia to the sea, which cut in two the Confederate territory and sealed the doom of its armies. But Lee was still holding out in Petersburg when Lincoln delivered his Second Inaugural Address as President. He could not yet claim the final victory, but he could begin to look ahead to the problem which would face the nation after the war, 'to do all which may achieve and cherish a just and lasting peace'.]

FELLOW-COUNTRYMEN:—At this second appearing to take the oath of the presidential office there is less occasion for an extended address than there was at the first. Then a statement somewhat in detail of a course to be pursued seemed fitting and proper. Now, at the expiration of four years, during which public declarations have been constantly called forth on every point and phase of the great contest which still absorbs the attention and engrosses the energies of the nation, little that is new could be presented. The progress of our arms, upon which all else chiefly depends, is as well known to the public as to myself, and it is, I trust, reasonably satisfactory and encouraging to all. With high hope for the future, no prediction in regard to it is ventured.

On the occasion corresponding to this four years ago all thoughts were anxiously directed to an impending civil war. All dreaded it, all sought to avert it. While the inaugural address was being delivered from this place, devoted altogether to *saving* the Union without war, insurgent agents were in the city seeking to *destroy* it without war—seeking to dissolve the Union and divide effects by negotiation. Both parties deprecated war, but one of them would *make* war rather than let



the nation survive, and the other would *accept* war rather than let it perish, and the war came.

One-eighth of the whole population were colored slaves, not distributed generally over the Union, but localized in the southern part of it. These slaves constituted a peculiar and powerful interest. All knew that this interest was somehow the cause of the war. To strengthen, perpetuate, and extend this interest was the object for which the insurgents would rend the Union even by war, while the Government claimed no right to do more than to restrict the territorial enlargement of it. Neither party expected for the war the magnitude or the duration which it has already attained. Neither anticipated that the *cause* of the conflict might cease with or even before the conflict itself should cease. Each looked for an easier triumph, and a result less fundamental and astounding. Both read the same Bible and pray to the same God, and each invokes His aid against the other. It may seem strange that any men should dare to ask a just God's assistance in wringing their bread from the sweat of other men's faces, but let us judge not, that we be not judged. The prayers of both could not be answered. That of neither has been answered fully. The Almighty has His own purposes. 'Woe unto the world because of offenses; for it must needs be that offenses come, but woe to that man by whom the offense cometh.' If we shall suppose that American slavery is one of those offenses which, in the providence of God, must needs come, but which, having continued through His appointed time, He now wills to remove, and that He gives to both North and South this terrible war as the woe due to those by whom the offense came, shall we discern therein any departure from those divine attributes which the believers in a living God always ascribe to Him? Fondly do we hope, fervently do we pray, that this mighty scourge of war may speedily pass away. Yet, if God wills that it continue until all the wealth piled by the bondsman's two hundred and fifty years of unrequited toil shall be sunk, and until every drop of

blood drawn with the lash shall be paid by another drawn with the sword, as was said three thousand years ago, so still it must be said, 'The judgments of the Lord are true and righteous altogether'.

With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in, to bind up the nation's wounds, to care for him who shall have borne the battle and for his widow and his orphan, to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations.

#### 44. THE SURRENDER OF THE ARMY OF VIRGINIA

9 APRIL 1865

[On 9 April 1865 General Lee, in command of the Confederate Army of Virginia, surrendered to General Grant at Appomattox Court House. The terms of the surrender were generous. On the next day Lee issued his last order to his Army.]

(a) *The Terms of the Surrender of the Army of Virginia,*  
9 April 1865

APPOMATTOX C.H.  
9 April 1865.

General R. E. LEE, Commanding C.S.A.:

In accordance with the substance of my letter to you of the 8th instant, I propose to receive the surrender of the Army of Northern Virginia on the following terms, to wit:

Rolls of all the officers and men to be made in duplicate, one copy to be given to an officer designated by me, the other to be retained by such officer or officers as you may designate.

The officers to give their individual paroles not to take arms against the Government of the United States

until properly exchanged, and each company or regimental commander sign a like parole for the men of their commands. The arms, artillery, and public property to be parked and stacked, and turned over to the officers appointed by me to receive them. This will not embrace the side-arms of officers, nor their private horses or baggage.

This done, each officer and man will be allowed to return to their homes, not to be disturbed by United States authority so long as they observe their parole and the laws in force where they may reside.

Very respectfully,

U. S. GRANT, *Lieut.-Gen.*

(b) *Lee's Farewell to the Army of Virginia,*

10 April 1865

HEADQUARTERS,

ARMY OF NORTHERN VIRGINIA,

10 April 1865.

After four years of arduous service, marked by unsurpassed courage and fortitude, the Army of Northern Virginia has been compelled to yield to overwhelming numbers and resources. I need not tell the survivors of so many hard-fought battles, who have remained steadfast to the last, that I have consented to this result from no distrust of them; but, feeling that valour and devotion could accomplish nothing that could compensate for the loss that would have attended the continuation of the contest, I have determined to avoid the useless sacrifice of those whose past services have endeared them to their countrymen. By the terms of the agreement, officers and men can return to their homes and remain there until exchanged. You will take with you the satisfaction that proceeds from the consciousness of duty faithfully performed; and I earnestly pray that a merciful God will extend to you His blessing and protection. With an increasing admiration of your constancy and devotion to your

country, and a grateful remembrance of your kind and generous consideration of myself, I bid you an affectionate farewell.

R. E. LEE, *General*.

## 45. LINCOLN'S LAST PUBLIC ADDRESS,

11 APRIL 1865

[On 10 April, the day after Lee's surrender to Grant at Appomattox Court House, large crowds assembled outside the White House calling on Lincoln for a speech. He promised to make one on the following day. The speech, his last in public, delivered three days before his death, was a splendid plea for reconciliation and magnanimity, filling in the outlines of the Proclamation of Amnesty.]

We meet this evening not in sorrow, but in gladness of heart. The evacuation of Petersburg and Richmond, and the surrender of the principal insurgent army, give hope of a righteous and speedy peace, whose joyous expression cannot be restrained. In the midst of this, however, He from whom all blessings flow must not be forgotten. A call for a national thanksgiving is being prepared, and will be duly promulgated. Nor must those whose harder part give us the cause of rejoicing be overlooked. Their honors must not be parceled out with others. I myself was near the front, and had the high pleasure of transmitting much of the good news to you; but no part of the honor for plan or execution is mine. To General Grant, his skilful officers and brave men, all belongs. The gallant navy stood ready, but was not in reach to take active part.

By these recent successes, the reinauguration of the national authority—reconstruction—which has had a large share of thought from the first, is pressed much more closely upon our attention. It is fraught with great difficulty. Unlike a case of war between independent nations, *there is no authorized organ for us to treat with*—no one man has authority to give up the rebellion for any

other man. We simply must begin with and mould from disorganized and discordant elements. Nor is it a small additional embarrassment that we, the loyal people, differ among ourselves as to the mode, manner, and measure of reconstruction. As a general rule, I abstain from reading the reports of attacks upon myself, wishing not to be provoked by that to which I cannot properly offer an answer. In spite of this precaution, however, it comes to my knowledge that I am much censured for some supposed agency in setting up and seeking to sustain the new State Government of Louisiana.

In this I have done just so much and no more than the public knows. In the Annual Message of December 1863 and the accompanying proclamation, I presented a plan of reconstruction, as the phrase goes, which I promised, if adopted by any State, would be acceptable to and sustained by the Executive Government of the nation. I distinctly stated that this was not the only plan which might possibly be acceptable, and I also distinctly protested that the Executive claimed no right to say when or whether members should be admitted to seats in Congress from such States. This plan was in advance submitted to the then Cabinet, and approved by every member of it. One of them suggested that I should then and in that connection apply the Emancipation Proclamation to the theretofore excepted parts of Virginia and Louisiana; that I should drop the suggestion about apprenticeship for freed people, and that I should omit the protest against my own power in regard to the admission of members of Congress. But even he approved every part and parcel of the plan which has since been employed or touched by the action of Louisiana.

The new constitution of Louisiana, declaring emancipation for the whole State, practically applies the proclamation to the part previously excepted. It does not adopt apprenticeship for freed people, and is silent, as it could not well be otherwise, about the admission of members to Congress. So that, as it applied to Louisiana, every member of the Cabinet

fully approved the plan. The message went to Congress, and I received many commendations of the plan, written and verbal, and not a single objection to it from any professed emancipationist came to my knowledge until after the news reached Washington that the people of Louisiana had begun to move in accordance with it. From about July 1862 I had corresponded with different persons supposed to be interested in seeking a reconstruction of a State Government for Louisiana. When the message of 1863, with the plan before mentioned, reached New Orleans, General Banks wrote me that he was confident that the people, with his military co-operation, would reconstruct substantially on that plan. I wrote to him and some of them to try it. They tried it, and the result is known. Such has been my only agency in setting up the Louisiana Government.

As to sustaining it, my promise is out, as before stated. But, as bad promises are better broken than kept, I shall treat this as a bad promise and break it, whenever I shall be convinced that keeping it is adverse to the public interest; but I have not yet been so convinced. I have been shown a letter on this subject, supposed to be an able one, in which the writer expresses regret that my mind has not seemed to be definitely fixed upon the question whether the seceded States, so called, are in the Union or out of it. It would perhaps add astonishment to his regret were he to learn that since I have found professed Union men endeavoring to answer that question, I have purposely forborne any public expression upon it. As appears to me, that question has not been nor yet is a practically material one, and that any discussion of it, while it thus remains practically immaterial, could have no effect other than the mischievous one of dividing our friends. As yet, whatever it may become, that question is bad as the basis of a controversy, and good for nothing at all—a merely pernicious abstraction.

We all agree that the seceded States, so called, are out of their proper practical relation with the Union, and

that the sole object of the Government, civil and military, in regard to those States, is to again get them into their proper practical relation. I believe that it is not only possible, but in fact easier, to do this without deciding or even considering whether those States have even been out of the Union, than with it. Finding themselves safely at home, it would be utterly immaterial whether they had been abroad. Let us all join in doing the acts necessary to restore the proper practical relations between these States and the Union, and each forever after innocently indulge his own opinion whether, in doing the acts he brought the States from without into the Union, or only gave them proper assistance, they never having been out of it. The amount of constituency, so to speak, on which the Louisiana government rests, would be more satisfactory to all if it contained fifty thousand, or thirty thousand, or even twenty thousand, instead of twelve thousand, as it does. It is also unsatisfactory to some that the elective franchise is not given to the colored man. I would myself prefer that it were now conferred on the very intelligent, and on those who serve our cause as soldiers.

Still, the question is not whether the Louisiana government, as it stands, is quite all that is desirable. The question is, Will it be wiser to take it as it is and help to improve it, or to reject and disperse? Can Louisiana be brought into proper practical relation with the Union sooner by sustaining or by discarding her new State Government? Some twelve thousand voters in the heretofore Slave State of Louisiana have sworn allegiance to the Union, assumed to be the rightful political power of the State, held elections, organized a State government, adopted a Free State constitution, giving the benefit of public schools equally to black and white, and empowering the Legislature to confer the elective franchise upon the colored man. Their legislature has already voted to ratify the Constitutional Amendment recently passed by Congress, abolishing slavery throughout the nation. These twelve thousand persons are thus fully committed

to the Union and to perpetuate freedom in the State—committed to the very things, and nearly all things, the nation wants—and they ask the nation's recognition and its assistance to make good this committal.

Now, if we reject and spurn them, we do our utmost to disorganize and disperse them. We, in fact, say to the white man: You are worthless or worse; we will neither help you nor be helped by you. To the blacks we say: This cup of liberty which these, your old masters, held to your lips, we will dash from you, and leave you to the chances of gathering the spilled and scattered contents in some vague and undefined when, where, and how. If this course, discouraging and paralyzing both white and black, has any tendency to bring Louisiana into proper practical relations with the Union, I have so far been unable to perceive it. If, on the contrary, we recognize and sustain the new government of Louisiana, the converse of all this is made true. We encourage the hearts and nerve the arms of twelve thousand to adhere to their work, and argue for it, and proselyte for it, and fight for it, and feed it, and grow it, and ripen it to a complete success. The colored man, too, in seeing all united for him, is inspired with vigilance, and energy, and daring to the same end. Grant that he desires the elective franchise, will he not attain it sooner by saving the already advanced steps towards it, than by running backward over them? Concede that the new government of Louisiana is only to what it should be as the egg is to the fowl, we shall sooner have the fowl by hatching the egg than by smashing it.

Again, if we reject Louisiana, we also reject one vote in favor of the proposed amendment to the National Constitution. To meet this proposition, it has been argued that no more than three-fourths of those States which have not attempted secession are necessary to validly ratify the amendment. I do not commit myself against this, further than to say that such a ratification would be questionable, and sure to be persistently questioned, while a ratification by three-fourths of all the States



would be unquestioned and unquestionable. I repeat the question, Can Louisiana be brought into proper practical relation with the Union sooner by sustaining or by discarding her new State government? What has been said of Louisiana will apply to other States. And yet so great peculiarities pertain to each State, and such important and sudden changes occur in the same State, and withal so new and unprecedented is the whole case, that no exclusive and inflexible plan can safely be prescribed as to details and collaterals. Such exclusive and inflexible plan would surely become a new entanglement. Important principles may and must be inflexible. In the present situation, as the phrase goes, it may be my duty to make some new announcement to the people of the South. I am considering, and shall not fail to act, when satisfied that action will be proper.

#### 46. HENRY TIMROD:

##### *EPITAPH ON THE CONFEDERATE DEAD AT MAGNOLIA CEMETERY*

Sleep sweetly in your humble graves,  
Sleep, martyrs of a fallen cause;  
Though yet no marble column craves  
The pilgrim here to pause.

In seeds of laurel in the earth  
The blossom of your fame is blown,  
And somewhere, waiting for its birth,  
The shaft is in the stone!

Meanwhile, behalf the tardy years  
Which keep in trust your storied tombs,  
Behold! your sisters bring their tears,  
And these memorial blooms.

Small tributes! but your shades will smile  
More proudly on these wreaths to-day,  
Than when some cannon-moulded pile  
Shall overlook this bay.

Stoop, angels. hither from the skies!  
There is no holier spot of ground  
Than where defeated valor lies,  
By mourning beauty crowned.



## APPENDIX

### CLAUSES IN THE CONSTITUTION OF THE UNITED STATES AND AMENDMENTS REFERRED TO IN THE DOCUMENTS

#### PREAMBLE

We, the People of the United States, in order to form a more perfect Union, establish Justice, insure Domestic Tranquillity, provide for the Common Defence, promote the General Welfare, and secure the Blessings of Liberty to ourselves and to our Posterity, do ordain and establish this Constitution for the United States of America.

#### ARTICLE I

##### SECTION 2

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative. . . .

##### SECTION 8

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts

and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States; . . .

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; . . .

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

#### SECTION 9

The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person. . . .

#### SECTION 10

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payments of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility. . . .

#### ARTICLE 11

##### SECTION 2

He [The President] shall have Power, by and with the advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise

provided for, and which shall be established by Law; but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

#### SECTION 4

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

### ARTICLE III

#### SECTION 2

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects. . . .

### ARTICLE IV

#### SECTION 2

The Citizens of each State shall be entitled to all Privileges and immunities of Citizens in the several States. . . .

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be

delivered up on Claim of the Party to whom such Service or Labour may be due.

### SECTION 3

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

### ARTICLE V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand and eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

### ARTICLE VI

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

## INDEX

- Abolitionists (origin), 81, 114, (petitions), 139 ff.; (and Crisis of 1850), 160 f.; (and Kansas-Nebraska Act), 231 f.; (and Lincoln), 276
- Acts of Congress: Homestead Act (1862), 271 ff., Kansas-Nebraska Act (1854), 194 ff., 202 ff., 217, 231, Missouri Enabling Act (1820), 32 ff., 241 ff., Pacific Railway Act (1862), 273 ff.
- References to: Judiciary Act (1789), 34, 47
- Adams, President John Quincy and Monroe Doctrine, 49; (elected President, 1824), 62, (defeated, 1828), 62
- Amendments to Constitution, References to: Tenth Amendment, 7, Eleventh Amendment, 14 f. (in Confederate Constitution), 257
- Antislavery, 270, 281
- Aristocracy (and industrial development), 129 ff.
- Army of Virginia, 299 ff.
- Bank of the United States (and *McCulloch v. Maryland*), 2 ff., (struggle with President Jackson), 84 ff.
- Biglow Papers*, 148 ff., 267 ff.
- Bishop, Thomas Brigham, 277
- Brown, John, 231 ff.
- Bryce, James, 3
- Calhoun, John C. (and 'Exposition of 1828'), 90; (speech on Abolitionist petitions), 139 ff., (and annexation of Texas), 141 (in *Biglow Papers*), 154 ff., (and Crisis of 1850), 160, 163 ff.
- California (and Great Britain), 146, (surrendered to United States), 159, (adopts State Constitution), 160 f.
- Canning, George, 19
- Castlereagh, Lord, 1
- Citizenship (considered in *Dred Scott* case), 207 ff.
- Clay, Henry (defeated for Presidency, 1844), 144, (and Crisis of 1850), 160 ff., 188 ff., 205 f.
- Columbia, District of, 160, 162
- Commerce Clause, 53 ff.
- Confederacy, Southern (considered in 1850), 180 f., 191, (Constitution of 1861), 251 ff., (Constitution considered in Corner-stone speech), 235 ff., and see Jefferson Davis' Message to Congress
- Contracts (and *Dartmouth College v. Woodward*), 19 ff., (and *Charles River Bridge v. Warren Bridge*), 135 ff.
- Copperheads, 289
- Crisis of 1850, 159 ff., 203
- Davis, Jefferson (elected President of Confederacy, 1861), 260, (Message to Confederate Congress, 1861), 260 ff.
- Democracy (and industrial development), 129 ff.
- Democracy in America*, 113 ff.
- Democratic National Party, 290, 295 f.
- Democrats, 62
- De Tocqueville, Alexis, 118 ff.
- Douglas, Senator Stephen A. (and Kansas-Nebraska Act), 191, 196, (Debate with Lincoln), 216 ff.; (and 1860 election), 224, and see Freeport Doctrine
- Emancipation of slaves, 199, 276, 203, and see Preliminary Emancipation Proclamation
- Emancipation Proclamation, see Preliminary Emancipation Proclamation
- Evellett, Edward, 285
- Federalists, 62
- France, 48 f.
- Freeport Doctrine, 216, 223 ff.
- Frontier, 121 f., 134
- Fugitive slaves, 160, 171, 176 ff., 195, 242
- Gadsden Treaty, 194
- Garrison, William Lloyd, 81 ff., 114
- Gettysburg, 285
- Grant, General, 299 ff.
- Greece, 49 f.



- Greeley, Horace, 276  
 Guadeloupe Hidalgo, Treaty of, 159  
 'Higher Law,' 186  
 Howe, Julia Ward, 277  
 Indians, 65  
 Jackson, President Andrew (elected President, 1828), 62; (First Inaugural Address), 62 ff.; (and Bank of the United States), 84 ff.; (and Proclamation to South Carolina), 103 ff.  
 Jefferson, Thomas, 32, 237  
 Johnson, Andrew, 290  
 Kansas, 194 ff., 197, 231  
 Lee, Robert E. (and John Brown), 232, (letter to his sister), 259 f.; (wins Second Bull Run), 279; (loses Antietam), 279, 281; (loses Gettysburg), 285; (surrenders to Grant), 299 ff.  
*Liberator*, 81 ff.  
 Lincoln, President Abraham (Speech at Peoria), 196 ff.; (Debate with Douglas, 1858), 216 ff.; (elected President, 1860), 234; (First Inaugural Address, 1861), 240 ff., 262 f., (calls for volunteers, 1861), 260, (letter to Greeley, 1862), 276 f., (issues Preliminary Emancipation Proclamation, 1862), 281 ff.; (Gettysburg Oration, 1863), 285 f., (issues Proclamation of Amnesty and Reconstruction, 1863), 286 ff., (re-elected President, 1864), 289 f.; (Second Inaugural Address, 1865), 297 ff.; (last Public Address, 1865), 301 ff., (views on the Union), 202 ff., 243 ff., 276 f., 303 ff.  
 Lone Star Republic, *see* Texas  
 Loose Construction, 2 f., 6 ff., 54 f.  
 Louisiana, 251, 302 ff.  
 Lowell, James Russell, 148 ff., 266 ff.  
 Maine, Sir Henry, 19  
 Marshall, Chief Justice (judgement in *McCulloch v. Maryland*), 2 ff.; (judgement in *Dartmouth College v. Woodward*), 19 ff., 135; (judgement in *Cohens v. Virginia*), 34 ff.; (judgement in *Gibbons v. Ogden*), 53 ff., (summary of his views), 3  
 Maryland, 278  
 Mason, James M., 266  
 Mason and Dixon's line, 31  
 McClellan, General George B., 279, 281, 290  
 Meade, General, 285  
 Mexico (and annexation of Texas), 144, (war with United States), 149 f., and *see* Gadsden Treaty  
 Militia, 64 f.  
 Missouri Compromise, 31 ff., 166, 194, 196 ff., 201, 203 ff., 206 f.  
 Monroe, President James (Annual Message, 1823), 49 ff.  
 Monroe Doctrine (original announcement), 48 ff.; (reasserted in Polk's Annual Message), 146 ff.  
 National Republicans, 62  
 National Union Party, 289 f.  
 Nebraska, 194 ff., 197, 273  
 New Mexico, 159 f.  
 Neutrality (and Monroe Doctrine), 51 f.  
 Nullification, 66, 99 ff., 103 ff.  
 Ordinance of Nullification, 99 ff., 103  
 Ordinance of 1787, 166  
 Ordinance of Secession, 234  
 Oregon, 144, 146, 160, 165  
 Police Power, 135  
 Polk, President James K. (elected President, 1844), 144, (and annexation of Texas), 144; (first Annual Message, 1845), 49, 140 ff.  
 Popular Sovereignty, *see* Squatter Sovereignty  
 Preliminary Emancipation Proclamation (1862), 281 ff.  
 President (de Touqueville on Election), 119 f., (veto power), 84, 90 f., 290  
 Prince Consort, 266 ff.  
 Proclamation of Amnesty and Reconstruction (1863), 286 ff.  
 Public Lands, 66; and *see* Homestead Act  
 Railways, 191, 273 ff.  
 Randall, James Ryder, 279  
 Reconstruction, *see* Proclamation of Amnesty and Reconstruction, Wade-Davis Bill, and Lincoln's last Public Address  
 Religion, 126 f.  
 Republicans (or Democrats), 62, (new party founded), 264, 271, (and Reconstruction), 286, 289 ff.

- Rush-Bagot Agreement, 1  
 Russell, Earl, 266
- Secession (in Webster's reply to Hayne), 66, 71 ff.; (in Webster's speech of 1850), 178 ff.; *and see* Ordinance of Nullification
- Senate (and President Jackson), 81, 90 ff., (contrasted with House of Representatives), 120 f
- Sewall, Samuel E., 81
- Seward, William H. (and Crisis of 1850), 160, 183 ff.; (as Secretary of State), 240, 281
- Slavery (extension of), 31, 197 ff.; (in the Territories), 31 ff., 194, 197, 199, 207, 264, 271, (and Southern expansion), 144, 149 ff., (and the Constitution), 174 ff., 237, 263; (viewed as a positive good), 139 ff., 153 ff., 173 f., 234 ff., 265, *and see* Abolitionists, Emancipation of slaves, Fugitive slaves
- Sliddell, John, 266
- South Carolina (and Nullification), 66, 71 ff., 99 ff., 103 ff., (secedes from the Union), 234
- Spain, 48 ff.
- Spoils System, 62, 65
- Squatter Sovereignty, 194, 230 f
- State Banks, 84 f
- States and federal power (in Marshall's judgements), 2 ff., 39 ff., 46 f., 50 f., (Jackson's views), 89, 103 ff.; (Calhoun's views), 168 ff., (Seward's views), 184 f., (Jefferson Davis' views), 261 ff.
- Stephens, Senator Alexander (Corner-stone speech), 234 ff
- Supreme Court (extent of jurisdiction), 35 f., 40 ff., 80 f., 221, 224 f., 247, (attacked by President Jackson), 85 ff
- Supreme Court Cases: *Charles River Bridge v. Warren Bridge* (1837), 135 ff.; *Cohens v. Virginia* (1821), 34 ff.; *Dartmouth College v. Woodward* (1819), 10 ff., 135, *Dred Scott v. Sandford* (1857), 206 ff., 218, *Gibbons v. Ogden* (1824), 53 ff., *McCulloch v. Maryland* (1819), 2 ff.
- Tallmadge, James, 31 f
- Taney, Chief Justice (judgement in *Charles River Bridge v. Warren Bridge*), 135 ff.; (judgement in *Dred Scott* case), 206 ff
- Tariffs (Tariff of Abominations), 99, (Southern opposition), 167, 262; (in Constitution of Confederacy), 250, 253
- Taxation (as a power to destroy), 16 f
- Texas (annexed), 144 ff
- Timothy, Henry, 306 f
- Trent*, 266 ff
- Union Humane Society, 81
- Utah, 160
- Vallandigham, Senator, 290
- Victoria, Queen, 266
- Wade-Davis Bill (1864), 290 ff
- Wai Democrats, 200
- Webster, Daniel (reply to Hayne), 66 ff.; (and Crisis of 1850), 160, 172 ff., 193, 205 f.
- Wings, *see* National Republicans
- Whitney, Eli, 31
- Whittier, John Greenleaf, 114 ff., 160, 193
- Wilnot Proviso, 150 ff
- Women (in American Society), 133 ff.

PRINTED IN  
GREAT BRITAIN  
BY  
THE RIVERSIDE PRESS  
EDINBURGH

